United States Court of Appeals for the Second Circuit



APPENDIX

Docket 76-1306 No. 76-1306

In The

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

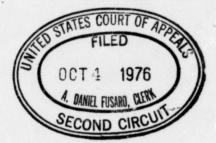
- v -

MICHAEL J. TICHE,

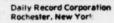
Appellant.

On Appeal From a Judgment of The United States District Court for the Northern District of New York

APPENDIX OF APPELLANT



WILLIAM J. QUINLAN
Attorney for Appellant
Office and P.O. Address
133 Wall Street
Schenectady, New York 12305
(518) 346-1221



PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET UNITED STATES DISTRICT COURT

MARCH 3, 1976 assigned to Judge Zampano for retrial of M. TICHE, A. COFFEY & A. JUST JUDGE NEWMAN N-75-59

TIT	LE OF CASE			TTORNEYS		
THE UNITED STATES			For U. S.:			
	vs.		Peter C. Do	orsev. I	I.S.	Attv
CHARLES D. MOELLER Cts		0. 11. & 12	Peter A. C			
DAVID N. BUBAR Cts. 1	2.3.4.5.7.8.9.10	11 12	Wm. F. Dow			
DAVID N. BUBAR Cts. 1,2	2,3,4,5,6,7,8,9,10	0,11,12,	Federal Bu	ilding N	lew H	aven
LBERT R. COFFEY Cts. 1	,2,3,4,5,7,8,11,	& 12				
ANTHONY A. JUST Cts. 1	2,3,4,5,6,7,8,1	1 &12				
DENNIS C. TICHE CTS. 1	2,3,4,5,7,8,9,1	0, 11, & 12	For Defendant:			
MICHAEL J. TICHE Cts. 1 TOHN W. SHAW Cts. 1,2,	3.4.5.6.7.8.9.10	111. 6 12	MOELLER: Theor		oskoff	
DONALD L. CONNORS. Cts.	1.2.3.4.5.6.8.1	0. 11 & 12	1241	Main St.		
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5871 and 5861(d) 5871						
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5/8 The Gr	and Jury at New	Haven return	ned a True Bi	II of I	ndict	ment
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2, 844(i), 2,	844(h),2,842(a Sections 5861(f) d 5871(2).12 ct	1) (3) 2 924 (c),2, 1962(c)	2, and	fory	atio
of Title 26,	Sections 5861(1)	58/1, 2, 1	5861(1)5871,	2, 5861	(c),	5871
phone to prom	ote unlawful act	tivities C	t 3) interest	ato two	ed te	16-
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commerce a f	ossess firearm, nd possess fire	arm, which f	irearm was no	t regis	tered	to
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receive and p	ossess firearm, nd possess firearms ational Firearms 975 at 10:00 A.	s and Transf	er Recrod.	ummons	may 1	to



DATE	PROCEEDINGS
5/8	date for pleading in the Indictment. Newman, J. m-5/9/75.
5/12	MOELLER BUBAR BETRES P. BETRES R. TICHE M. JUST CONNORS:
	Summons issued in duplicate together with certified copy of Indictment
	handed to U.S. Marshal for service.
5/14	MOELLER: PLEA: Plea of not guilty entered to Counts 1,2,3,4,5,
	8, 9,10,11 & 12. All pre-trial motions to be filed by June 2, 1975.
	Newman, J. m-5/14/75.
5/14	M. TICHE: CJA Form 20 appointing Thomas D. Clifford, Esq. to
5/16	represent defendant, filed Newman, J. Copiesdistributed M. TICHE: CJA Form 23, Financial Affidavit, filed by defendant.
Market Street,	Wester of Policies on to all defendants filed by the Cout
5/19 5/19	Notice of Reginess as to all defendants, filed by the Govt. ANTHONY A. JUST: PLEA: Plea of not guilty entered to Counts 1,2,3,4,5,7,8,
. 2/ 2/	11 and 12 Oral motion fordeft to reduct bond to \$20,000 or \$10,000, non-surety, deni
	the time Dublic Defender appointed. Court asks Atty. Craig to act as laision
	office for all requests by counsel in this case. Case continued on same bond for tri
	Newman, J. m-5/19/75.
5/19	MICHAEL J. TICHE: PLEA: Plea of not guilty entered to Counts 1,2,3,4,5,6,7,
	8,9,10,11 and 12. Territorial limits of bond extended to West Virginia, Ohio, New
	Jersey, New York and Connecticut for purpose of regular business of deft. Motions to
	be filed by June 2, 1975. Oral motion of deft. to restrain U. S. M shal from taking
	fingerprints, denied. Case continued on same bond for trial. Newman J. m-5/19/75. PETER BETRES: PLEA: Plea of not guilty entered to Counts 1,2,3,4,5,6,7,8,9,
5/19	10,11 and 12. Upon motion of U. S. Attorney, Atty. Martino is permitted to appear
	in this case. Court informs him to submit proper papers and to also obtain local
	counsel. Motions to be filed by June 2, 1975. Oral motion of defendant to restrain
	U. S. Marshal from taking fingerprints, denied. Case continued on same bond for
	trial. Newman, J. m-5/19/75.
5/19	DAVID N. BUBAR: PLEA: Defendant nor counsel did not appear. Bench Warrant
3(1)	may issue. Newman, J. m-5/19/75. Bench Warrant issued in duplicate, and together
	with certified copy of Indictment, handed to U. S. Marshal.
5/19	DONALD L. CONNORS: PLEA: Deformant nor counsel did not appear. \$10,000.00
	non-surety bond is hereby revoked and Benh Warrant may issue. Newman, J. m-5/19/75.
	Bench Warrant issued and together with certified copy of Indictment, handed to U.S.
	Marshal. 5/2 - Defendant again did not appears 9 marked over. Newman, J.m-5/22/75 COFFEY: Bench Warrant issued in duplicate and together with certified copy
5/20	of Indictment, handed to U. S. Marshal for service.
5/19	RONALD BETRES: PLEA: Over to May 28, 1975 at 10:00 A.M. Newman, J. m-5/20/
5/21	Court Reporter's notes of proceedings (peas) held on May 14, 1975, filed.
5/01	(Gale, R.) Marshal's Return Showing Servicec, filed: Certified mail re MOELLER, JUST,
5/21	BUBAR, R. BETRES, P. BETRES, M. TICHE and CONNORS.
5/21	Envelope containing summons to ANTHONY A. JUST returned marked "address
	unknown".
5/22	CONNORS: U. S. Magistrate's Papers, filed: Bail Reform Act Form No. 2,
	Personal Appearance Bond in the amount of \$10,000.00, CJA Form 20 appointing
	M. Lawrence Shields, III, Esq. in Pittsburg, Pa. on bail hearing.
5/22	CONNORS: Motion for Issuance of Bench Warrant, filed by Govt. and So
	Ordered. Newman, J. m-5/22/75. Copies handed U. S. Atty. Bench Warrant issued in
	duplicate and together with certified copy of Indictment handed to U.S.Marshal for
5/22	service. PETER BETRES: Application for Order for Provision of Handwriting Exemplars,
-/	filed by Govt.
	(continued)
	- Contraction of the contraction
-	

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DATE	PROCEEDINGS
1976	
1/9	12:05 P.M. Deft. Moeller's summation continues to 1:20 P.M. 2:30 P?M.
	to 4:25 P.M. Deft. P. Betres summation. 4:27 P.M. Jury excuseduntil
10	Mon. 1/12/76 at 10:00, A.M 4:30 Court adjourned. Newman, J. m-1/12/76
1/8	CJA Form 21 approving payment of \$25.50 to Gerald Gale, Court
1/10	Reporter, filed. Newman, J. copies mailed to A.O. for payment.
1/12	CJA Form 21 approving payment of \$33.00 to Gerald Cale, Court
	Reporter, filed. Newman, J. copies mailed to A.O. for payment, re:
1/12	M. Tiche. Marshal's return showing service, filed: Subpoena to Produce
	wind over the state of the stat
1/12	JURY TRIAL CONTINUES: 11:10 14 jurors present. 11:10 to 11:59 A.M. Dett. D. Tiche's Summation. 12:00 to 1:30 P.M. Lunch. 1:40 to
	A.M. Dett. D. Tiche's Summation. 12:00 to 1:30 P.M. Lunch. 1:40 to
	2:10 P.M. Deft. A. Coftey's Summation. 2:35 P.M. to 3:40 P.M. Deft.
	A. Just's summation. 3:40 P.M. Jury excused until 1/13/76 at 10:00
	A.M 3:50 P.M. Court adjourned until 1/13/76 at 10:00 A.M. Newman,
	J. m-1/13/76.
1/13	JURY TRIAL CONTINUES: 14 Jurors present. 10:30 A.M. to 10:50 A.M. Summation by
	deft. R. Betres. 10:50 A.M. to 11:26 A.M. Summation by deft. M. Tiche. 1:45 P.M. to
	3:22 P.M. Government's rebuttal. 3:25 P.M. In the absence of jury counsel argue
	rebuttal comments. All defts. join in Motion for Judgment of Acquittal & Mistrial. Motions denied. 3:40 P.M. Jury returns to courtroom and Court Instructs them on
	rebuttal comments. 3:45 P.M. Jury excused to 1/14/76. Court instructs counsel to
	redew all full exhibits with the Clerk after court adjourns. 4:00 P.M. Court
	adjourned to 1/14/76 at 10:00 A.M. Newman, J. m-1/14/76.
1/14	Marshal's Return showing service, filed: 2 Subpoena to Testify; 1 Subpoena to Pro-
1/14	JURY TRIAL CONTINUED: Pages 1 and 4 of Amended Complaint were corrected and
	substituted copies were filed. 10:10 A.M. 14 jurors present. Court excused two
	alternates. 10:21 A.M. to 12:55 P.M. Court charges jury. Govt. and defts. take
	exception to Charge. No further charge to be given. 1:20 P.M. All full exhibits
	and Indictment and verdict form delivered to jury by Marshal and deliberations begin.
•	2:45 P.M. Notes delivered to the Court ffom jury. Court and counsel agree that
<u> </u>	transcripts of Guard's testimony be given to jury. Court will allow jury to return
	verdicts as they come. 3:35 P.M. Jury continues deliberating. Court Ex. 23 thru 27,
	marked for Ident. 3:45 P.M. Two notes delivered to the Court from jury. 3:50 P.M.
	Jury returns to courtroom and verdict as to DEFENDANT DONALD CONNORS read, as follows: Not Guilty on Counts 1, 2, 3 and 4. Court eccepts verdict. 3:56 P.M. Jury excused
***	until 1/15/76 at 10:00 A.M. Deft. Connors is discharged from bond and custody in
	this case. Deft. Connors moves to have grand jury testimony sealed. Counsel agree
	not to show what they have to any one else, but will return same to the Court when
	this case concludes. Court Ex. 28 and 29, marked for Ident. 4:02 F.M. Court
	adjourned to 1/15/76 at 10:00 A.M. Newman, J. m-1/15/76.
1/15	CJA Form 21 re deft. CONNORS approved for \$149.35 for travel and investigation
	by Att. Golub. Newman, J. Copies distributed.
1/15	JURY TRIAL CONTINUES: 12 jurorspresent and at 10:00 A.M. continue deliberations.
	12:25 P.M. Jury enters courtroom and portions of testimony of witness Windish read by
	reporter. Transcript of balance of testimony will be handed jury. 1:00 P.M. Jury
	returns to continue deliberating. Court Ex. #30, marked for Ident. 4:50 P.M. Jury
1/11	excused until 1/16/76 at 10:00 A.M. Court adjourned. Newman, J. m-1/16/76
1/15	Certified copy of Order from U. S. Court of Appeals granting Government's
	motion to dismiss the appeal as to Moeller, Buhar, D. Tiche, M. Tiche, Just, R. Betres. A. Coffey, J. Shaw, the eight appelless who stipulated to the dismissal. m-1/15/76. Two certified copies handed to U. S. Marshal.
	Two certified copies handed to U. S. Marshal.
1/15	Court Reporter's Notes of proceedings held before Newman, J. at
	New Haven on October 3, 1975 filed, Gale, R.
	New naven on October of 1979 acteur bille, its

.976 ./16	JURY TRIAL CONTINUES: 10:00 A.M. 12 jurors report and continue deliberations. 11:10 A.M. Note from Jury. 11:25 A.M. Jury returns to Courtroom and Court asks jury to be more specific re discussion of the law in the Courts charge. Testimony of Shaw will be pursued further by Court and counsle. 12:05 P.M. Jury returns to continue deliberation Sixteen volumes of Court Reporter; Transcript of Shaw's testimony, fill Court Ex. 31 and 32 marked for ID. 2:25 P.M. Jury returns to Courtroom
/16	Court and courts charge. Testimony of Shaw will be pursued further by Court and counsle. 12:05 P.M. Jury returns to continue deliberation Sixteen volumes of Court Reporter; Transcript of Shaw's testimony, fill Court Ex. 31 and 32 marked for ID. 2:25 P.M. Jury returns to Court room.
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	by Court and counsie. 12:05 P.M. Jury returns to continue deliberation Sixteen volumes of Court Reporter; Transcript of Shaw's testimony, fill Court Ex. 31 and 32 marked for ID. 2:25 P.M. Jury returns to Court room
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	Sixteen volumes of Court Reporter; s Transcript of Shaw's testimony, fill Court Ex. 31 and 32 marked for ID. 2:25 P.M. Jury returns to Court room
	Court Ex. 31 and 32 marked for ID. 2:25 P.M. Jury returns to Courtroom
	and Count complice with their meta to med
	and Court complies with their note to read portion of charge re:
	aiding and abetting and Counts 3 & 4. 2:45 P.M. Jury retires to contin
	deliberation. 4:00 P.M. Jury excused until 1/19/76 at 10:00 A.M.
19	4:15 P.M. Court adjourned. Newman, J. m-1/19/76.
17	CONNORS: Judgment of Acquittal, filed and entered. copies mailed to counsel of record. m-1/20/76.
19	JURY TRIAL CONTINUES: 12 jurors report at 10:00 A.M. and return to
1/	jury room to continue deliberations. Court coope at 10.25 A.W.
	jury room to continue deliberations. Court opens at 10:25 A.M. Court asks counsle to submit in writing their requests as to portion of
	Shaw's testimony they want read to jury. 12:15 Court rules on requests
	of Shaw's testimony. 12:20 Jury enters Courtomm and portions of Shaw
	Testimony read, 3:00 P.M. Jury retires to juryroom to continue deliber.
	ations. Court exs. 34 and 35 marked. 5:10 P.M. Jury returns with
	following 2 verdicts. Deft. D. Bubars Guilty to all four counts.
	Deft. D. Tiche, guilty to all four counts. Jury polled at request of
	counsel and all answer in the affirmative. 5:16 P.M. Jury excused to
	1/20/76 at 10:00 A.M. Deft. D. Tiche moves to continue in same bond.
	Deft. D. Bubar move to continue bond in the same amount. Govt. moves to have deft. Bubar surrender passport. Deft. D. Tiche bond increased
	to \$100,000 w/corporate surety. Deft. Bubar-Court will not admit
	him to bond pursuan to section 3148. Present bond i revoked and deft.
	is remanded to custody of U.S. Marshal. 5:40 Court adjourned. Newman,
	J. m-1/20/76.
/19	Marshal's return showing service, filed: Subpoena ticket.
/20	JURY TRIAL CONTINUES: 10:00 A M 12 jurges report to jury
	and continue deliberations, 2:10 P.M. Note from jury 2:15 P.M. Jury
	rectified to Courtoom and request to near Marie Fobes testimony, is gran
	and read at this time. 2:25 P.M. Jury retires to Juryroom to continue
	deliberations. Jury will be excused at 4:00 P.M. today. Deft. Rubar
	ALLY, appears and request that Court's remove said deft from Whallow
	Ave. jail to Bridgeport C.C. U.S. Marshal indicates to Court that the
	move deft. Bubar to Bpt. C.C. 2:30 Recess. Court Exs. 37-39 marked
	for ID. 4:05 P.M. Jury returns to Courtroom. 4:07 P.M. Jury excused until 10:00 A.M. of 1/21/76. Atty. Zalowitz requests from the Court
	the reason for which no bond was set for Deft. Bubar. Court adivises
	it will be filed and be made available to Counsel. 4:15 P.M. This
	case in recess until 10:00 A.M. of 1/21/76. Newman, J. m-1/21/76.
/21	JURY TRIAL CONTINUES: 10:00 A.M. 11 jurges report to Jury room
	10:33 A.M. Court advises counsel that one of the jurges is ill and that
	the remaining jurors will be allowed to go home. Court request of
	counsel that they be available to be in Court on five minutes notice
	In this proceeding. Court Ex. 40 marked for ID. 11:04 Jury enters
	Courtroom, 11 members present, 11:07 A M. Jury excused until 10:00 A M.
	of 1/22//6/ 11:09 A.M. Court adjourned in this matter until 10:00
100	A.M. of 1/22/76. Newman, J. m-1/21/76.
1/22	Marshal's return showing service, filed: two subpoenas to testify.
	[30
D. C. 109 Cri	iminal Continuation Sheet

1976	PROCEEDINGS
1/22	JURY TRIAL CONTINUES: 10:00 A.M. Jury trial continues 12 jurors
	report to Jury room to continue deliberations. 10:43 Note from Jury
	110:0" A.M. Jury enters Courtroom. Court anguers jury's question
	posed in the note with instruction regarding Ct 2 and warious al
	of the count. Court Ex. 41 marked for ID. 7:30 P.K. Note from jury.
	4:34 P.M. Jury returns with verdict as to deft. Charles D. Moeller-
	not guilty to Cts. 1,2,3 &4. verdict is verified and ordered recorded.
	1:36 P.M. Jury excused until 10:00 A.M. of 1/23/76. Court rules that
	case. 4:37 P.M. Court adjourned in this matter until 10:00 A M of
- 100	11/23/76. Newman, J. m-1/23/76.
1/23	JURY TRIAL CONTINUES: 10:00 A.M. 12 jurors report to jury room and continue deliberations. 2:20 P.M. Note from jury. 2:35 P.M. Jury return
	to Courtroom. Court grants request of note as to further instruction as to Cts. 3 & 4 and aiding and abetting. Instruction given to jurors. 2:55 P.M. Jury excused to jury room to continue deliberations. 4:00
	P.M. Note from jury. 4:10 P.M. Jury returns to Courtoom, note requests
	to leave early as one of the jurors is not feeling well. 4:12 P.M.
	jury excused until 10:00 A.M. of 1/26/76. Court Exs. 42 and 43 marked
	for ID. 4:13 P.M. Court adjourned in this matter until 10:00 A.M.
	of 1/26/76. Newman, J. m-1/26/76.
11 11	BUBAR: Motion to Reconsider, filed by deft, and endorsed as follows:
	"Motion for Reconsideration, denied. Motion for hearing on Motion for
	Reconsideration, denied, no adequate grounds having been set forth to
	require a further hearing." Newman, J. m-1/26/76. copy handed to
	Atty, Zalowitz and copy sent to Atty, Dorsey.
1/23	BUBAR: Ruling on Application for Bail Pending Appeal, filed and
	entered under seal, Newman, J. copies handed to Atty. Dorsey and
- /00	Zalowitz.
1/23	JUST: CJA Form 21 approving payment of \$43.00 to Gerald Gale, Court Reporter, filed. Newman, J. copies distributed.
1/26	TICHE, Dennis: Request for Extensic of Time in Which to File Motions for Acquitta
1/26	or for a New Trial, filed by defendant.
1/20	
1/26	Newman, J. copies distributed.
1/20	JURY TRIAL CONTINUES: 10:00 A.M. 12 jurors report to jury room to continue deliberations. 12:30 P.M. Note from jury. 12:39 P.M. Jury returns to Courtroom. Court gives further instruction as to aiding
	and abetting. 12:45 P.M. Jury returns to jury room. Court Ex. 44,
	marked for ID. All defense counsel take exception to instruction.
	3:53 P.M. Note from jury. Jury returns to Courtroom. Court anvises
	jury of its rulling regarding their request. Court requests that they
	pose a specific question regarding the law in Counts 3 & 4. 4:19 P.M. jury returns to jury room. Court Ex. 45 marked for ID. 4:50 P.M. Note
	from jury. Jury returns to Courtroom and Court answers question. Court Ex. 46 marked for ID. 5:08 P.M. Note from jury requesting to go home.
	Ex. 46 marked for ID. 5:08 P.M. Note from jury requesting to go home.
	5:09 P.M. Court excuses jury until 10:00 A.M. of 1/27/76. Court Ex.
	47 marked for ID. 5:10 P.M. Court adjourned. Newman, J. m-1/27/76. MOELLER: Judgment of Acquittal, filed and entered. Newman, J.
1/27	MOELLER: Judgment of Acquittal, filed and entered. Newman, J.
1709	m-1/2///b copies mailed to Attys Dorsev and Koskott.
1/27	Request for Extension of Time in Which to File Motions for Acquitta
	or For a New Trial endorsed: "Motion granted." Newman, J. copies mailed
	Atty Dorsey and Curtis. re: D. TICHE.

DATE	PROCEEDING8
976	
/27	JURY TRIAL CONTINUES: 10:00 A.M. 12 jurors report to jury room to
	continue deliberations. 10:35 A.M. Note from jury regarding elements
	of Count Four. Jury returns to Courtroom and Court reads further
	instruction to jury on Count Four. Court Ex. 48 marked. Jury retires
	to jury room for continued deliberation. 12:05 P.M. Note from jury. Jury returns to Courtroom and Court answers question posed on Count
	Four. Court ex. 49 marked for ID. Jury retires for further deliberation
	5:12 P.M. Note from jury to be excused for the day. 5:15 P.M. Jury is
	excused until 10:00 A.M. of 1/28/76, Court Ex. 50 marked for ID.
	Court puts on the record that at 4:00 P.M. a note from the jury was
	received requesting to go home. The note was discussed with counsel
	in chambers after which time the Court sent back note rejecting their
	request. Newman, J. m-1/22,76.
1/27	BUBAR: Notice of Appeal, filed by deft. Certified copy of
	Notice of Appeal and docket entries sent to U.S.C.A. Copy of Notice
1/28	of Appeal sent to counsel of record. JURY THAL CONTINUES: 10:26 A.M. Court advises counsel that juor)Mr. Macensky) i
1/20	ill and that 11 jurors who reported in will be excused until 1/29/76 at 10:00 A.M.
	10:32 A.M. Court adjourned in this matter. Newman, J. m-1/28/76.
1/29	Court Reporter's Transcript of Proceedings held on September 29, 1975 (Suppressio
	hearing), filed. (Gale, R.)
1/29	R. BETRES: Defendant's Supplemental Memorandum in Support of
700	Defendant Anthony A. Just's Motion to Dismiss Count Eight, filed.
/28	D. TICHE: CJA Form 21 authorizing transcript of Rebuttal Summati
/29	of U. S. Atty., filed. Newman, J. mopies distributed.
129	JURY TRIAL CONTINUES: 10:00 A.M. 12 jurors report to continue deliberations. 12:34 note from jury. advises they have reached verdi
	on Counts 1 &2 and are deadlocked on Cts. 3 & 4 on some of the defts.
	Court will allow jury to report verdicts and then deliver a modified
	"Allen" charge, 12:50 jury returns the following verdicts, Deft.
	"Allen" charge. 12:50 jury returns the following verdicts. Deft. P. Betres: GUILTY CTS 1 & 2. Deft. R. Betres: GUILTY CTS 1 & 2.
	Deft. A. Just: GUILTY CTS 1 & 2. Deft. A. Coffey: GUILTY CTS 1 & 2.
	Verdicts are verified and ordered recorded. 12:53 jury excused.
	Deft. M. Tiche moves for mistrial on all cts. denied. All defts move
	for mistrial as to Cts 3 & 4-denied. Court Ex. 51, marked for ID.
	2:40 P.M. Court delivers Allen charge. 2:45 P.M. jury excused to jury room. 5:04 P.M. Note from jury to go home. Deft's P. Betres, R. Betr
	and A. Coffey move for mistrial-denied. Deft. P. Betres moves for vo
	dire of jury on 1/30/76 re:publicity, 5:13 P.M. Jury excused until
	10:00 A.M. of 1/30/76. Court Exs. 52 and 53 marked for ID 5:14
	10:00 A.M. of 1/30/76. Court Exs. 52 and 53, marked for ID 5:14 Court adjourned. Newman, J. m-1/30/76
/30	JURY TRIAL CONTINUES: 10:00 A.M. 12 jurors report and continue
	deliberation, 10:28 A.M. Court requests of counsel whether they want
	a voir dire of jury re: publicity. Court Ex. 54, marked for ID.
	Court Ex. 55, marked for ID. 10:45 jury enters Courtroom, Court voir dires panel re: publicity. Court andwers question posed in note.
	Court Fy 56 marked for ID 3.24 DW Notes from posed in note.
	Court Ex. 56, marked for ID. 3:24 P.M. Note from jury regarding
	adjournment for the day, 3:40 P.M. Jury excused until 10:00 A.M.
	of 2/2/76. Court Ex. 57, marked for ID. All deft. move for mistrial- denied. 3:45 P. M. Court adjourned in this matter. Newman, J. m-1/30
/29	BUBAR: Motion to Dismiss (appeal), filed by Govt. (copy)
	Motion to Dismiss and copy of Notice of Appeal sent to U.S.C.A.
1/30	CJA Form 21 approving payment of \$150,00 to Elizabeth McCarthy,
1/00	1 Con roth 21 approving payment of 51 M. Of the Elizabeth metatring

1976ATE	PROCEEDINGS
2/2	Court Reporter's Notes of Proceedings held on 9/30/75, filed
	Gale, R. (Motions to Suppress)
2/2	Court Reporter's Transcript of Proceedings held on 9/30/75 5:1-1
	Gale, R. (Motions to Suppress). Notes
2/2	Court Reporter's Transgript of Proceedings hald on 9/29/75 filed
2/3	Gale, R. (Motion to Suppress).
_2[3	JURY TRIAL CONTINUES: 10:00 A.M. 12 jurors report to jury room
	to continue deliberations. 10:30 A.M. Court request to hear i counsel regarding request to voir dire jury panel regarding further deliberations.
	Deft. P. Betres moves for mistrial-denied. Counsel for defense reques
	individual voir dire of Mr. Pond regarding his health condition.
	10:52 A.M. Jury is brought to Courtroom and asked whether Further
	deliberations would be helpful re: two deadlocked Cts. Foreman replic
	in the affirmative. 10:58 P.M. Court excuses jury to continue deliber
	ations. 4:34 P.M. Note from jury advising they have reached verdicts.
	4:35 P.M. Jury returns the following verdicts: Peter Betres: COUNT 3-GUILTY, COUNT 4-GUILTY. Rondld Betres: COUNT 4-NOT GUILTY. Verdict
	verified and ordered recorded. Deft. P. Betres request noll of jury
	all answer attirmatively, 4:39 P.M. jury excused until 10:00 A M
	or 2/4//b. Deft's move for the bond to remain the same. Court rules
	the bond of R. Betres to remain the same. P. Betres: Bond is increase
	to \$100,000. with corporate surety. Deft. P. Betres moves to stay the execution of the bond-granted execution stayed until Mon. 2/9/76 at
	10.00 A M 4.55 P.M. Court adjourned in this matter. November 1
	10:00 A.M. 4:55 P.M. Court adjourned in this matter. Newman, J. m-2/4/76. * Bond is \$25,000.00, with 10% surety re R. Begres. (32,500 in Regist)
2/4	JURY TRIAL CONTINUES: 10:A.M. 12 jurges report to the jury room to
	continue deliberations. 2:45 P.M. Court advises counsel of note roce
	from jury this morning re: having testimony of Agent Gilliam read to them. Court Ex. 59, marked for ID. 2:50 P.M. Jury returns to the
	Countries Court Ex. 59, marked for 10. 2:50 P.M. Jury returns to the
	of. 2:54 P.M. to 3:25 P.M. Court Reporter reads transcript of testimo
	of Agent Gilliam. 5:10 P.M. Jury excused until 10:00 A.M. 2/5/76.
<u>.</u>	Deft. move for a mistrial and request a check of Mr. Ponds health
2/5	denied. Court Ex. 60, marked for I.D. 5:15 P.M. Court adjourned.
2/3	Court Reporter's Notes of Proceedings held on Oct. 1, 1975, filed.
2/5	(Suppression Hearing). Gale, R. JURY TRIAL CONTINUES: 10:00 A.M., 11 jurors report to jury room
-13	as juror. Mr. Pond reported he was ill 11:40 A M Court advises
	as juror, Mr. Pond reported he was ill. 11:40 A.M. Court advises counsel of the present condition of Mr. Pond, who is presently
	waiting in chambers. Court requests to hear counse! concerning their
	previous request of individual voir dire of Mr. Pond. Defts move
	for a mistrial. Court will defer ruling until inquiry is made of Mr.
	Pond. Counsel for defense orally submit question to Court to be asked of Mr. Pond. Counsel request that voir dire be held in chambers.
	12:07 P.M. Court and counsel and defts. proceed to chambers to voir
	dire Mr. Pond. 12:43 P.M. jury enters Courtroom. Court advises juror
	to withdraw from their consideration Cts. 3 &4 as to defts. Just and
	Coffey. The case of M. Tiche will remain for their consideration.
	12:52 jury retires to jury room. Deft. Tiche renews motion for mistri
	denied. Deft's Coffey and Just move that the jury be polled in re:
	Cts. 1 & 2. Deft. D. Tiche moves for a reduction of bond-denied Bond for defts. Just and offey increased to \$50,000. with surety
	The street of the street of the street
	execution is stayed until 5:00 P.M. of 2/5/76. 2:07 P.M. note from
	execution is stayed until 5:00 P.M. of 2/5/76. 2:07 P. M. note from iuror, Mr. Pond. Court advises it will excuse jury ontil Mon, 2/9/76

1976	PROCEEDINGS
2/5	2:49 Jury enters Courtroom. Court polls jury in the cases of
	R. Betres, A. Coffey and A. Just all .nswer affirmatively. 2:53 P.M. jury excused until Monday, 2/9/76 at 10:00 A.M Deft's Coffey and
	Just's motions for mistrial as to Cts. 3 &4 granted. Court Ex. 61.
	marked for Ir. 2:54 P.M. Court adjourned in this matter until 10:00 A. of 2/9/76. Newman, J. 2/6/76
2/5	P. BETRES: Motion for Judgment of Acquittal Notwithstanding
2/5	the Verdict and in the Alternative for a New Trial, filed by deft. P/BETRES: Notice of Appeal (from Order Secting Bond), filed by
-1-3	deft. copy of notice of appeal sent to counse, of record. Cert.
	deft. copy of notice of appeal sent to counse of record. Cert. copy of Notice of Appeal and docket entries mail: 1 to Court of Appeals.
2/6	Court Reporter's Transcript of Proceedings held on Oct. 1, 1976
	filed. Gale, R. (Suppression hearing).
2/5	CJA Form 21 approving the amount of \$81.00 payable to Gerald Gale.
270	Court Reporter, filed. Newman, J. copies mailed to A.O. for payment.
2/9	Motion for Reduction of Bond, filed by deft. P. Betres. JUST: Defendant Just's Motion to Limit the Government's Argument
	and Defendant Just's Supplemental Request for a Jury Charge, filed by
	deft.
11 11	CONNORS: Memorandum in Opposition to Defendant Connor's Proposed
	further examination of Loretta Marley, filed by govt.
2/9	JURY TRIAL CONTINUES: 10:00 A.M. 12 jurgs report to jury room.
	Mr. Kwolek is ill and requests to go home. Court allows him to leave.
	10:30 A.M. Deft. P. Betres moves for a reduction of bond pending
	appeal from \$100,000, with corporate surety to a bond of \$75,000.
	with 10% deposit. absent objection by govt., the motion is granted. Deft, M. Tiche moves for a mistrial-motion denied. Court advises
	counsel that is has a note from jury to be taken up when all jurors
	present. 10:54 Jury excused until 10:00 A.M. of 2/10/76. 10:54
	Court adjourned in this matter.
2/9	Court Reporter's Notes of Proceedings held on Oct. 2, 1975.
	filed. Gale, R. (Motion to Suppress).
2/10	Gourt Reporter's Transcript of Proceedings held on Oct. 2nd add 3rd, 1975, filed. Gale, R. (2 folders)
2/9	P. BETRES: Appearance Bond in the amount of \$75,000.00 with
	10% deposit, and provision to travel to Pennsylvania, filed by deft.
	and approved. Newman, J. m-2/10/76.
2/10	JURY TRIAL CONTINUES: 10:00 12 jurors report to the jury room
	to continue deliberations. 11:00 A.M. Court takes up note given to
	Court on Thurs, regarding testimony of J. Shaw and Ciccarelli of Yello
	Cab. Deft. M. Tiche renews motion for mistrial-denied. Deft. Tiche moves for Individual voir dire of Mr. Kwoledk re: his medical status.
	11:26 A.M. Court voir dires Mr. Kwolek regarding his health. Court
	advise it is going to let him go home and to have him contact the 'Cler
	office in the A.M 11:31 A.M. The remaining jurors return to the
	Courtroom and are excused until 10:00 A.M. of 2/11/76. Motion for
	mistrial is renewed motion denied. 11:40 P.M. Court adjourned in
2/11	this matter. Newman, J. m-2/11/76.
2/11	JURY TRIAL CONTINUES: 12 jurors report to the jury room to continued deliberations 10:47 A M Court advised coursel that all twelve member
	deliberations. 10:47 A.M. Court advised counsel that all twelve member of the jury are present and that it will have the Court reporter read
	the requested testimony. Deft. Tiche moves for mistrial-denied. Deft
	Tiche moves for a voir dire of Mr. Kwolek as to health. 10:51 A.M.
	Court voir dires Mr. Kwolek as to his health. 10:54 A.M. the remaini
	jurors are present. Court takes up note regarding testimony. over
	filed Continuities Start

1976	PROCEEDINGS
2/11	
	10:55 to 11:04 A.M. Court reporter reads testimony of Shaw and
	Ciccarelli of Yellow cab. 11:04 A.M. Jury retires to jury room. Court
	The first of the f
	Note from the jury indicating they are deadlocked as to deft. M. Tiche Deft. M. Tiche moves for mistrial Govt objects and request Court to
	The Alminett Lot the reasons starpe in onen court court but
	Tooke a decement the requirement of the Speedy Trial Act if a now this
	115 to benefit. Gove responds that they are proposed to 5
	2:35 P.M. Jury panel is excused permanently with the thanks of the Court. Court will certify additional fees for the panel. Court.
	Ex. 63, marked for ID. 2:36 P.M. this case is adjourned. Newman, J.
	m-2/12/76 E. 2.30 I.M. this case is adjourned. Newman, J.
2/11	CJA Form 21 approving payment in the amount of \$150.00 to
	Iradi bakulski, investigator, filed. Ne man, I conjec mailed to
2/12	A. O. Tor payment.
2/13	COFFEY: Motion for Judgment of Acquittal, filed by deft,
	JUST: Motion for A Judgment of Acquittal or, In the Alternative,
11 11	R. BETRES: Mottion for Judgment of Assistant No. 11
	R. BETRES: Mottion for Judgment of Acquittal Notwithstanding the Verdict and in the Alternative for a New Trial, filed by deft.
2/17	Court Reporter's Notes of Proceedings held on 10/6/75 (Trial), filed. (Cale, P.)
2/18	tanscript of Proceedings held on 10/6/75 (Telai) filed /c-1-
2/10	TIGHAL TICHE MOTION to Withdray as Counsel, filed by Atty Thomas Clifford
2/18	Memorandum In Support of Motion for Acquittal or for A New Trial,
2/19	P. BETRES: Copy of Stipulation for Withdrawal of Appeal, filed by
	ILUE DATTIES.
2/19	Court Reporter's Notes of Proceedings held an Oct 7 15
2/20	and 22, 1975, filed, Gale, R. (four packages).
2/20	and 22, 1975, filed. Gale, R. (four packages). CJA Form 20 appointing Alan Neigher, Esq., to represent deft. R. BETRES, filed. Newman I confes distributed
2/23	thingle of copies are the copies are
	Copy of Order from the U.S.C.A. granting Motion of January 22, 1976, to dismiss the Appeal from the U.S.D.C. for the District of Conn.,
	rusaro, C. m-2/23//6.
2/23	JUST: Order for Return of bond, filed and entered Norman, I
2/05	m-2/23/16. Check 359 issued and handed to Public Defender Craig
2/25	Court Reporter's Notes of Proceedings (Trial) held on Oct. 29, 1975, filed. Gale, R.
2/25	Court Reporter's Notes of Proceddings (Trial) held on Oct. 31,
	1975, filed, Gale, R.
2/27	LOUTE Reporter's Notes of Proceedings held on Oat 0 and New 2
	1975, Tiled. Gale. R. (2 packages)
2/27	Court Reporter's Notes of Proceedings held on Nov. 5 1975 and
3/1	Nov. 7, 1975, filed. Gale. R.
3/1	A. O. for payment (FOBES)
3/2	Notice of Motion, Motion for New Trial of the Quaching of the
	Indictment, filed by deft, (BUBAR)
3/1	JUST: CJA Form 21 authorizing and approving payment of \$2,088 to
	Gerald Gale, Court Reporter, filed, Newman, J. copies distributed.

DATE	PROCEEDINGS		
1976_	(() () () () () () () () () (
3/4	Court Reporter's Notes of Proceedings (trial) held on October		
3/4/	C.Ja Form 21 approving payment of partial claim of \$255.25 to		
•	la 1 and - Count Deportor Filed Newman. J.		
141	Owder 641 and entered It is hereby ordered that the retital of		
1-1	Michael Tiche on all counts of the retyped four-count indictillent and the		
	retrial of Albert Coffey and Anthony Just on Counts 3 and 4 of the		
	material indiatment is assigned to Judge Koherr C. Zampano, Droviged.		
	however, that Judge Newman shall retain jurisdiction of the cases of		
	Tiche, Coffey and Just prior to actual retrial for all purposes except		
	Tiche, Correy and Just prior to define the light in his discretion		
	ruling on such pre-trial motions as Judge Newman, in his discretion,		
	deems so related to the conduct of the retrials as to be more approriat		
	ly ruled on by Judge Zampano. Clarie, I. m-3/9/76, copies sent to		
	Judge Newman, Judge Zampano, Attys Dorsey, Clifford, Bowman and Craig.		
3/10	Court Reporter's Notes of Proceedings (ITIAI) neid on Oct. 14.		
	ho75 and Nov. 12, 1975 filed, Russell & Gale, R. (two packages)		
3/11	Order Filed and entered. All motions in connection With the		
	retrial of dest Michael Tiche on Cts 1 through 4 and dests. Anthony		
	la. Just and Albert R. Coffey on Cts 3 and 4 shall be illed by March		
	26, 1975, copies sent to Atty, Dorsey, Craig, Bowman, Thomas D.		
	Clifford, Judge Zampano.		
3/12	Court Reporter's Motes of Proceedings (motions) held on Oct.		
3/1/	15, 1975, filed, Cala, R.		
2/15	Court Reporter's Notes of Proceedings (trial) held on Nov. 17.		
3/15			
0.1	1976, filed. Cale, R		
3/15	M. TICHE: Notice of Readiness, filed by govt. Court Reporter's Notes of Proceedings (trial) held on Nov. 19, 1975		
3/1	Court Renorter's Notes of Proceedings (Crist) in 20 cm		
	High, dale, P.		
3/19	M. TICKE: Application for Notice of Alibi, filed by govt.		
1/23	ofsposition a spacing of all Proping Motions: Hearing held on		
	pending Motions. Court hears oral argument on Motions. Court "x.		
	64 filled under seal by Order of the Court. Fotions for Judgment of		
	contital and actions for hew Trial are denied with the exception of		
	Deft. D. Tiche's motion which will remain pending until the Court has		
	ar opportunity to review the added material to be submitted. Court		
	advises it will file a written memorandum regarding those motions.		
	Court bears counsel on sentencing. DYSPOSITIONS: I. BETWES: Impr.		
	5 yrs on Count 1. Tepr. 5 yrs on Ct 7. to run consecutive with Ct 1.		
	Thor. 10 yrs on each of Gts 3 and 4. to run concurrent with each other		
	and consecutive to Ct 1 for a total sentence of 15 yrs. Court advises		
	and consecutive to Gt I for a total sentence of Tyyls, court advises		
	dest of right to appeal. Same bond to continue pending appeal.		
	DISPOSITION: 1. EXTRES: Impr. 5 yrs on Ct. 1 and Impr. 5 yrs on Ct. 2		
	To run consecutive to sentence in Ct. 1. Dett. advised of right to		
	appeal. Same lord to continue mending appeal. DISPOSTION: A. COFFEY		
	Impr. 5 yrs on Ct. 1 and Impr. 5 yrs on Ct. 2. to run consecutive to		
	the sentence in Ct. 1. Deft. advised of right to appeal. Same bond		
	to continue pending appeal. DISPOSTTION: A. JUST: Impr. 5 yrs on Ct.		
	and Impr. 5 yrs on Ct. 2. to run consecutive with sentence imposed on		
	and thirt . 5 VIS On the second consequence of the second consequence		
	Ct. 1. Defr. advised of right to appeal. Same bond to continue pend-		
	ing appeal. DISPOSITION: D. BURGE: Impr. 5 yrs on Ct. 1 and Impr. 5 y		
	on Ct. 2 to run consecutive with sentence imposed on Ct 1. Impr. 10 y		
	on each of Cts 3 and 4. to run concurrent with each other and consecu		
	ely to the sentences imposed on Ots 1 and 2. Total sentence of 20 year		
	ELY CO CHE SCHICTICES LIMITED TO THE STATE OF THE STATE OF THE SCHOOL STATE OF THE STATE OF THE STATE OF THE SCHOOL STATE OF THE STATE		
	Deft. advised of right to appeal. Same bond to continue pending appear		
	Deft. advised of right to appeal. Same bond to continue pending appear		

1976	PROCEEDINGS
3/22	PLECSITION: ". TICHE: Impr. 5 yes on Ct 1, and Imm. 5 yes on Ct. 3
	To run consecutive to sentence imposed on C+ 1 Tour la ve en
	each of the hand a to run concurrent with each other and consequition
	to the sentence tunosed on Ct 1. Total sentence of It was
	advised of right to appeal. Same hours to continue needly
	mearing conclinues: Deft. Bubar a Motion to manal him Mate
	Witnesses is granted and unsealed documents to la often was forms
	exploit por. Dott. Subar's motion to set reasonable hord resident
	appeal is denied. Deft. D. Tiche's Motion to be resentence under
	incarceration to Lewishurg, Pa. is denied. Court will not object
	17 Tilly 9211 Of Tricone conde de fit to bint t
	I PULLUI LO TEMBER DONG OF SSU MIN TO SUN DINE WIEL TO
	The state of the s
	Motion to reduce \$50,000 bond to \$20 000 with 10% cursty to exert 1 to
	extent of \$75 con with 10% each comete Track to me to the
	to keeple of the work to that or ports not say and freet to dent
	Dame Dotta to Continue. The libar's and request to my local to
	dented. Dett. Rubar's Motion to unscal that northon of transcript
*	Concerning witnesses to be subnognand at govt. ornerse is granted.
	Deft. R. Betres requests that he be sentenced under 4208(a)(2) is
	denied. Deft Bubar's request for transcript at Covt. errense of today's proceeding dealing with bail on appeal is granted.
	P. M. this proceeding is adjourned. Mergnan, J. m3/22/76 and m-3/23/76
3/22	Notice of Appeal, filed by deft. Just.
3/22	COFFEY: Notice of Appeal, filed.
3/23	R. BETRES: Notice of Appeal, filed by deft. D. TICHE: Notice of Appeal, filed by deft.
3/23	D. TICIE: Motice of Appeal, filed by deft.
11 11	A. Just: Notice of Appeal, filed by deft.
11 11	A. COFFEY: Notice of Appeal, filed by deft. BUFAR: Notice of Appeal, filed by deft.
11 11	P. METRES: Potice of Appeal Siled in defe.
11	P. METRES: Potice of Appeal, filed by deft. Certified conics of all notices of Appeal and docket entries sent to 1.S.C.A. on 3/26/76
3/24	
3/23	Contractor s notes of Proceedings (Trial) held on Oct. 16 and
2/01	21. 17/3. filed. Russell. R.
3/24	Court Reporter's Notes of Proceedings (tylal) held on Oct. 23 and
3/22/	So 1970, CIASO, RUSSELL, R.
21221	COFFEY: CJA Form 21 approving transcript of trial, filed Newman, J. copies distributed.
3/22	D. TICHE: CJA Form 21 approving transcript of trial and all proceed
	filed. Neuman, J. copies distributed.
3/23/	D. TICHE: CJA Form 21 approving payment of \$31.60 to Cortill No
	Court Reporter. 111ed Newman. J. copies distributed
3/20	1. The Description of the land
3/24	10711C - 1101 ly 1015
3/24	Marshal's return showing service, filed: 14 Subpoenas to testive
3/25	Marshal's non est return, filed: 1 subpoena to produce.
	Commitments, filed and entered, Newman, J. m-3/25/76. Certified confidence of each handed to the U.S. Marchel for
	OL CALL HATTIER CO CHE U.S. MAISHAI FOT SCHULCO
	HIST. Motion to Distinct Co.
3/25	Just Focton to Dismiss Cts 3 & 6 of the amended Indictment
3/25	by govt and leave of Court is granted. Newman, I, m-3/26/76 con-
3/25	by govt and leave of Court is granted. Newman, J. m-3/26/76. copinal

1976 3/25 COFFE 3/26 by govt 3/26 by govt 3/26 JUS 3/26 In Form 3/26 R. J on 3/23 granted Appeals Newman 3/20 argumen will dit rem m-3/29/ 3/20 h. aring Neuman 3/31 a.lvises which as or Neuman 3/31 a.lvises which as or Neuman 3/31 a.lvises which as or Neuman argumen Office Neuman Office Pichael Neuman copy ss 3/31 Holion	LER, et als PAGE 19 N-75-59 Criminal
3/25 COFFF by govt 3/26 M. 3/26 M. 3/26 M. 3/26 M. 3/26 M. 3/26 M. 3/27 M. 3/28 M. 3/28 M. 3/28 M. 3/28 M. 3/28 M. 3/20 Mov. 4 3/29 Mov. 4 3/29 Mov. 4 3/20 Mov. 4 3/21 M. 3/2	PROCEEDINGS
3/26	Y: Motion to Dismiss Cts 3 & 4 of the Amended Indictment, filed
3/26 by govi 3/26 just in Formal R. J. Just on 3/23 granted. Serviced Applied Applied Appeals Newman 1/20 argument will ditrem in 3/29 h. aring Newman 3/31 a.lvises which is defined a litter on the serviced argument will distrem in 3/29 h. aring Newman 3/31 a.lvises which is defined all litter of the serviced argument all litter of the serviced argument will distribute the serviced argument with a litter of the serviced argument all litter of the serviced argument are serviced argument argument are serviced argument argument are serviced argument argume	and So Ordered. Newman, J. m-3/26/75. copies sent.
3/26 JUS2 in Form 3/26 R. J on 3/23 granted 3/26 P. Br Applied Appeals Newman 1/20 argument vill 4 it rem in-3/29 3/30 Co Nov. 4 3/31 a.lvises which is oc New Newman 0/31 Re Ordered Neyman copy so 3/31 Hotel	TCHE: Response to Defendant's Motion for Change of Venue, filed
3/26 JUS2 in Form 3/26 R. J on 3/23 granted P. Bi Applied Appeal: Newman 1/20 argumet vill d it ren in-3/29 3/30 Nov. 4 3/30 h. aring Newman 3/31 a.lvise: vnich d oc. i. n oc. New Newman ordered Hichael Neyman copy so	TORE: Response to be endine a necessity and sales
in Form R. Jon 3/23 granted P. Br. Applied Appeals Newman 1/20 argument will dit rem in 3/29 h. aring Newman 3/34 a. vises which a be't. It rem in 1/20 h. aring Newman 1/20 h. a	: Notice of Appeal, filed on 3/22/76 endorsed: Leave to Appeal
3/26 R. 3 on 3/23 granted P. Bi Applice Appeal: Newman 1/20 argumet vill 4 it ren in-3/29 3/30 Nov. 4 3/31 alvise: vnich 4 oc New Newman 0 Newman 0 Newman 1/21 alvise: vnich 4 oc New Newman 0	a Pauperis granted. Newman, J. m-3/26/76.
granted P. Bi Applies Appeals Newman 1/20 argumen will delit rem m-3/29 3/30 Nov. 4 3/32 h. aring Neuman 3/34 a.lvises which is b. Ct. is con Neuman delichael Neuman copy se 3/31	ETRES, D. BUBAR, A. COFFEY, D. TICHE: Notices of Appeal, filed 76 endorsed as follows: "Leave to Appeal in Forma Pauperis
3/24 Applica Appeals Newman it ren in-3/29 3/20 An argumer it ren in-3/29 Nov. 4 3/20 An aring Neuman 3/21 Alvises Which is ion Neuman Alvises Inches Inc	Norman I m-3/26/76
Applica Appeals Newman argumen will d it ren in-3/29 3/30 Nov. 4 3/22 h. aring Neuman 3/31 a. vises which b. ft. for Neuman copy sa 3/31	TRES: Application for Appointment of Counsel endorsed:
Newman	tion denied without prejudice to renewal in the Court of
3/21 argumen will do it rem m-3/29/ 5/30 Co	. Rule 4(b), Rules of the Court of Appeals, Second Circuit.
3/21 a.lvises with the maring normal strength of the maring Neuman 3/21 a.lvises which the maring neuman ne	J. m-3/26/76. copies sent to Deft., Attys Sagarin and Dorsey.
3/31 vill ds it rem m-3/29/ m-3/29/ m-3/29/ mov. 4 3/20 h. aring Neuman Neuman Neuman Neuman Neuman Copy Sa Neuman	earing held on Motion for Change of Venue: Court hears oral
it ren m-3/29/ 5/30 02 Mov. 4 3/20 h. aring Neuman 3/31 a.lvises which is 0. ft. n 0. ft. n 0. lene Neuman 0. ft. n 0. ft.	c. Court reserve decision on motion for change of venue. Court
3/30 m-3/29, 3/30 Nov. 4 3/30 h. aring Neuman 3/31 a.lvises vnich o oc't. n oc Neu Neuman Ordered Hichael Neyman copy so	cided Atty Clifford's motion to withdray as counsel at the
3/30 Nov. 4 3/30 Nov. 4 3/30 h. aring Neuman 3/31 a.lvises which is oc. Neu Neuman 1/31 Re Ordered Hichael Neyman copy so	ers its decision on motion for change of venuc. Ecoman, J.
h. aring Neuman 3/31 a.lvises vnich o oc't. r oc Neu Neuman ordered Hichael Neyman copy so	76.
h. aring Neuman 3/31 a.lvises which of the reconstruction Neuman, 1/31 Recomman, 1/31 Neuman, 1/31 Neuman, 1/31 Neuman, 1/31 Neuman, 1/31 Neuman, 1/31	rt Reporter's Notes of Proceedings (Trial) held on Oct. 30,
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Or Newman, O/31 Re- Ordered Hichael Neyman, copy se	as requesced. Court hears de t. on pro se motion for new trial.
Neuman, 3/31 Representation of the Neuman, copy so	oves pro se for a reduction of the bond set in this case. Motion
Orderes Hichael Neyman, copy se	trial-decision reserved. Motion for reduction of bond is denie
Orderes Hichael Neyman, copy se	J. m-3/31/76. ling on Motion To Transfer, filed and entered. it is hereby
Nevman, copy se	that the proceedings in Criminal No. N-73-59 against deft.
Neyman, copy so	J. Tiche are transferred to the Northern District of New York.
3/31 copy s	J. m-4/1/76. copies mailed to Attys Dorsey an Clifford.
3/31 1101	nt vo Julie Zampano
Ne man	ion to Vithdray as Counsel (M. TICHE) endorsed: Motion granted.
NC Elan	J. m-4/1/76. copies mailed to counsel (porsey & Clifford).
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D. C. 109 Criminal Continu	tion Sheet

DOCKET ENTRIES, NORTHERN DISTRICT OF

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18:371 Co 18:371 Co 18:1952 & 2 If 18:844(d) & 2 26:5861(d) & 5871 & 18:2 II. KEY DATES & INTERVALS ARREST or U.S. Custody Bogan High Righ Date Suppose Street	OFFENSES CHARGED ONSpiracy Otterstate travel to contivity Interstate trans of extinity Unlawful possession firearm INDICTMENT E ARREIGNMENT	ommit unlawful xphosives of unregistered	Date Date Date Disposition of Chargee Disposition Di
Search Issued Viarrant Issued Summons Search Search Issued Search Issued Company Search Issued Issued Company Search I	INITIAL NO. INITIAL APPEARANCE I PRELIMINARY EXAMINATION OR REMOVAL	Date Peduled Date Preid Tape Number	D. OUTCOME: DISMISSED
US Amorney or Asst. William F. Dow,	III, Asst. Will		Faved Ciset Chome / Come 1.5 7.65

- 5-ca 41: rames ar	nd suffix numbers of other defendants on same indicamentual/urmation
SATE	TIDOCUMENT NO.) PROCEEDINGS
1976	
<u> </u>	Filed certified copy of Indictment, Amended Indictment, Ruling on Motion to Transfer, docket entries and Form B statistical card, from the District of Connecticut.
April 15	/ Filed Memorandum signed by Judge Foley, adding case to March Session, Judge Werker to preside.
April 15	Filed CJA Form Copy 5.
April 28	Filed copy of letter from AUSA William Dow to William J. Quinlan dated 4/26/76.
April 30	Filed Appearance as attorney by Wm. F Dow, III Notice of Readiness and Application for ocice of Alibi.
April 30	Filed Designation of Judge Henry F. Werker beginning May 17, 1976.
May 12	Filed Notice of Motion for an Order dismissing Indictment, etc., returnable Albany May 17.
May 12	Filed Defendant's Memorandum of Law.
,	Filed Response to Defendant's Motion to Dismiss
FORM AO-256	

DOCKET ENTRIES, NORTHERN DISTRICT OF NEW YORK.

,976 Motion for an order dismissing the Indictment, AY 17 by deft. - Decision Reserved Motion for discovery-Gov't. to turn over 1.2.3.4.5.
6 and 7 with the exception of internal correspondence, etc. Motion for suppression-will review suppression hearing held by Judge Newman and apply it to this May 20 Filed Supplemental Response to Deft.'s Motion to Dismiss Filed letter from William J. Quinlan to Judge May 21/ Henry F. Werker May 26 Filed Order and Petition for Writ of Habeas Corpus for John Shaw to appear 6/4/76, Albany. Writ issued 5/26, delivered to Marshal 5/27/ June 1 Filed Memorandum Decision of Henry F. Werker, DJ stating that trial should commence on or before June 13, time limits applicable will be satisfied.

June 1 Filed Memorandum and Order of Henry Werker, DJ denying motion of deft. Tiche to suppress certain June 3 Filed letter from William F. Dow, A.U.S.A. to William Quinlan dated 5/28/76. June 7 Trial moved by U.S. Attorney. Jury drawn and sworn. 2 alternate jurors. Trial continues. Trial continues. June 8 Trial Continues. June 9 June 10 June 11 Trial Continues Trial continues. Jury not present, deft. moves for judgment of acquital on count 1-denied. Deft. moves for dismissal of counts 2,3,4-denied. Deft. moves for motion for dismissal of all countsdenied. Requests to Charge: Deft: 1-6. Received 7 Denied. Plaintiff: 3 supplementals. 1-denied. 2 & 3 received.

Trial continued. Mr. Dow sums up for plaintiff. J June 14 Mr. Quinlan sums up for deft. Rebuttal by Mr. Dow. Judge Werker charges jury. Jury retires to deliberate. Court exhibits 3,4 and 5 are filed. June 15 Jury continues deliberations Tury continues ".Court exhibit # 6 filed. Court exhibit 7 and 8 filed. Court exhibit 9 June 16 filed. Jury continues deliberation. Jury absent -Court June 17 exhibit # 10 filed. Jury present -Court exhibit # 11 filed. Jury continues deliberations. June 18 Jury present -Court exhibit # ? filed. TOTAL CONTRACTOR PARALIST.

TOTAL CONTRACTOR DATE FERENCE MARIE CONTRACTOR CO

DOCKET ENTRIES, NORTHERN DISTRICT OF NEW YORK.

	MICHAEL J. TICHE	7	6 44	
DATE	PROCEEDINGS (continued)	-	XCLUDABL	No. IDE
1976	(Document No.)	(a)		1 (c) 1 (d
June 18	Jury comes in with verdict. Defendant is guilty on counts 1, 2 and 4. Not guilty on Count 3. Jury is polled on each count. Unanimous verdict on each Count. Quinlan moves to set aside verdict on grounds stated. Motion denied. Mr. Dow moves for sentencing. Presentence investigation is ordered. Sentencing set down for Tuesday, July 6 at 10:00 A.M. Defendant is continued on bail.			
June 23	Filed Copy 5 of CJA Form 21.			11
July 6 July 12	Filed Copy 2 of CJA Form 21 The court advised the deft. of his right to speak in his own behalf, deft. spoke, his attorney spoke. The deft. is committed to the custody of the Atty. Gen. or his authorized representative for treatment and supervision pursuant to 18 USC 5010(b) as extended by 18 USC 4216 until discharged by the Youth Corrections Division of the Board of Parole as provided in 18 USC 5017(c), to run concurrently on each Count, (1,2,4). The court directs that the deft. surrender to the U.S. Marshal, Pittsburgh, Pa. on Thursday, July 8, 1976 at 10:00 a.m. Filed CJA Form 21, copy 5. Filed Notice of Appeal Filed Application for Return of Exhibits not admitted into evidence. Filed Judgment and Commitment Filed executed Writ for John Shaw.			
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United States District Court
District of Counces and
FILED AT NEW MATERIAL

Sylvester A. Markowski, Alerk

IN THE UNITED STATES DISTRICT COURT

Deputy Clerk

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

DONALD L. CONNORS

P

CRIMINAL NO. N-75-59

CHARLES D. MOELLER,
DAVID N. BUBAR, aka Noble David Bubar,
PETEP BETRES,
RONALU D. BETRES,
ALBERT R. COFFEY,
ANTHONY A. JUST,
DENNIS C. TICHE,
MICHAEL J. TICHE,
JOHN W. SHAW and

The Grand Jury Charges:

COUNT ONE

That commencing on or about the month of December, 1974, the precise date being to the Grand Jury unknown, and continuously thereafter up to and including the date of the filing of this indictment, in the District of Connecticut and elsewhere, CHARLES D. MOELLER, DAVID N. BUBAR, PETER BETRES, RONALD D. BETRES, ALBERT R. COFFEY, ANTHONY A. JUST, DENNIS C. TICHE, MICHAEL J. TICHE, JOHN W. SHAW, and DONALD L. CONNORS, defendants herein, wilfully and knowingly did combine, conspire, confederate, and agree together and with each other and with diverse other persons to the Grand Jury unknown, to commit the following offense against the United States of America:

To travel in interstate commerce between Butler, Pittsburgh, and Boyers, all in the Commonwealth of Pennsylvania; and New York in the State of New York; and Sheiton, Derby, Danbury and New Haven in the State of Connecticut, with the intent to promote, manage, carry on and facilitate the promotion, management and carrying on of an unlawful activity, to wit: the commission of arson in violation of Section 53(a)--113, Connecticut General Statutes (Rev. 1958 as Amended), and did perform acts to promote, manage, carry on and facilitate the promotion, management and carrying on of such unlawful activity in violation of Title 18, United States Code, Section 1952 and 2.

OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the defendants did commit, among others, the following overt acts:

- a. In late December, 1974, or early January, 1975, DAVID N. BUBAR and PETER BETRES traveled from New York, New York, to Shelton, Connecticut.
- b. On or about February 17, 1975, DENNIS C. TICHE traveled from Boyers, pennsylvania, to Shelton, Connecticut, and ANTHONY A. JUST traveled from New Kensington, Pennsylvania, to Shelton, Connecticut.
- c. On or about February 20, 1975, DENNIS C. TICHE and JOHN W. SHAW arranged to purchase and did purchase and acquire drums for the purpose of transporting explosives and an accelerant from Boyers, Pennsylvania to Shelton, Connecticut.
- d. On or about February 20 and February 27, 1975, DENNIS C. TICHE and JOHN W. SHAW purchased or obtained gasoline to be used as an accelerant.
- e. On or before February 27, 1975, DENNIS C. TICHE purchased and obtained dynamite, detonating or primer cord and blasting caps for use in igniting the accelerant.
- f. On or about February 27, 1975, DENNIS C. TICHE and others arranged to rent and obtained the use of an Avis Rental truck.
- g. On or about February 27, 1975, DENNIS C. TICHE, MICHAEL J. TICHE, and JOHN W. SHAW prepared and loaded the explosives and accelerant aboard the Avis truck for transportation from Boyers, Pennsylvania, to Shelton, Connecticut.
- h. On or about February 27, 1975, PETER BETRES arranged to have DONALD L. CONNORS drive the Avis truck loaded with the explosives and accelerant from Boyers, Pennsylvania, to Shelton, Connecticut.
- On or about February 28, 1975, DONALD L. CONNORS drove the Avis truck from Boyers, Pennsylvania, to Shelton, Connecticut.
- j. On or about February 28, 1975, DONALD L. CONNORS made a telephone call from the State of New York to the State of Connecticut, in the course of which he received instructions as to the precise destination and the route he was to follow thereto.

- k. On or about February 28, 1975, PETER BETRES traveled from Butler, Pennsylvania, to Shelton, Connecticut, and from Shelton, Connecticut, to New York, New York.
- 1. On or about February 28, 1975, DENNIS C. TICHE, MICHAEL J. TICHE, and JOHN W. SHAW traveled from Pittsburgh, Pennsylvania, to New York, New York and then to New Haven, Connecticut, and thence to Shelton, Connecticut.
- m. On or about February 28, 1975, ANTHONY A. JUST, ALBERT R. COFFEY and RONALD D. BETRES traveled from Pennsylvania to Danbury, Connecticut, and thence to Shelton, Connecticut.
- n. On or about March 1, 1975, DUNALD L. CONNORS delivered approximately twenty-four (24) drums of gasoline and two (2) drums of explosives to Plant 4 of Sponge Rubber Products Company, She'+on, Connecticut.
- o. On or about March 1, 1975, DAVID N. BUBAR arranged and facilitated the delivery of gasoline and explosives into Plant 4, Sponge Rubber Products Company, Shelton, Connecticut, and the entry thereinto of DENNIS C. TICHE, MICHAEL J. TICHE and JOHN W. SHAW.
- p. On or about March 1, 1975, DAVID N. BUBAR, DENNIS C. TICHE, MÎCHAEL J. TICHE, JOHN W. SHAW, ANTHONY A. JUST, RONALD D. BETRES and ALBERT R. COFFEY were in Plant 4, Sponge Rubber Products Company, Shelton, Connecticut.
- q. On or about March 1, 1975, RONALD D. BETRES, ALBERT R. COFFEY and ANTHONY A. JUST abducted and removed from Plant 4, Sponge Rubber Products Company, Shelton, Connecticut, three persons employed thereat, to wit: ROY RANNO, ALFRED C. HANLEY and ROBERT V. DE JOY.
- r. On or about February 10, 1975, February 28, 1975 and March 19, 1975, CHARLES D. MOELLER directed and authorized the payment of the sums of Twenty Thousand (\$20,000) Dollars and Fifteen Thousand (\$15,000) Dollars, and Fifteen Thousand (\$15,000) Dollars, moneys of Ohio Decorative Products, Inc., Grand Sheet Metal Company and/or Sponge Rubber Products Company, to Southern Supply Company, delivery of which was made to DAVID N. BUBAR.
- s. On or about February 11, 1975, DAVID N. BUBAR paid and delivered to PETER BET?_S a sum of money.

- t. On or about February 28, 1975, PETER BETRES delivered a sum of money to DENNIS C. TICHE.
- u. On or about March 1, 1975, DENNIS C. TICHE delivered a sum of money to MICHAEL J. TICHE and JOHN W. SHAW.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

On or about February 28, 1975, in the District of Connecticut and elsewhere, DAVID N. BUBAR, PETER BETRES, DENNIS C. TICHE, MICHAEL J. TICHE, JOHN W. SHAW, RONALD D. BETRES, ALBERT R. COFFEY, ANTHONY A. JUST, DONALD L. CONNORS and CHARLES D. MOELLER did travel and cause travel in interstate commerce between Butler, Boyers, and Pittsburgh, all in the Commonwealth of Pennsylvania, and New York in the State of New York, and Shelton, Derby, Danbury and New Haven, in the State of Connecticut, with the intent to promote, manage, carry on and facilitate the promotion, management and carrying on of an unlawful activity, to wit: the commission of arson in violation of Section 53-(a)-113, Connecticut General Statutes (Rev. 1958, as Amended), and did perform acts to promote, manage, carry on and facilitate the promotion, management and carrying on of such unlawful activity,

In violation of Title 18, United States Code, Section 1952 and 2.

COUNT THREE

On or about the 28th day of February, 1975, in the District of Connecticut and elsewhere, DAVID N. BUBAR, PETER BETRES, DENNIS C. TICHE, MICHAEL J. TICHE, JOHN W. SHAW, ALBERT R. COFFEY, ANTHONY A. JUST, DONALD L. CONNORS and CHARLES D. MOELLER did transport in interstate commerce, from Boyers in the Commonwealth of Pennsylvania to Shelton in the State of Connecticut, explosives, that is, dynamite, detonating or primer cord and blasting caps, knowing and intending that the said explosives would be used unlawfully to damage and destroy a building on Canal Street, in Shelton, Connecticut. known as Plant No. 4, Sponge Rubber Products Company,

In violation of Title 18, United States Code, Section 844(d) and 2.

COUNT FOUR

On or about March 1, 1975, in the District of Connecticut and elsewhere, CHARLES D. MOELLER, DAVID N. BUBAR, PETER BETRES, RONALD D. BETRES, ALBERT R. COFFEY, ANTHONY A. JUST, DENNIS C. TICHE, MICHAEL J. TICHE, JOHN W. SHAW and DONALD L. CONNORS, did willfully and knowingly receive and possess a firearm, as defined in Title 26, United States Code, Section 5845(a)(8), and Title 26, United States Code, Section 5845(f)(1)(A), to wit: a destructive device consisting of dynamite, detonating or primer load, blasting caps and gasoline, which firearm was not registered to any of them in the National Firearms Registration and Transfer Record, as required by Chapter 53, Title 26, United States Code,

In violation of Title 26, United States Code, Section 5861(d) and 5871, and Title 18, United States Code, Section 2.

/S/ Guy P. Nocera
FOREMAN

/S/ Peter C. Dorsey
PETER C. DORSEY
UNITED STATES ATTORNEY

/S/ Peter A. Clark
PETER A. CLARK
ASSISTANT UNITED STATES ATTORNEY

/S/ William F. Dow III
WILLIAM F.DOW, III
ASSISTANT UNITED STATES ATTORNEY

JUDGMENT OF CONVICTION.

ENDANT >							
	L		ООСКЕ	T NO. >	76-CB	-44	
	JUDGMENT A	ND PROBAT	ION/COM	MITMENT	ORDE	R	245 (6/74)
	In the presence of the attorn the defendant appeared in po				MONTH	DAY 6	YEAR 1976
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	with counsel	William_J_	Quinlan, as	ne of counsel)			
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\exists	There being a finding/verdic	t of	JILTY. Defendant is	discharged			
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	and 5671 and 18		,, 1	_ ,			202(4)
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1		neant had anything to say v	wny judgment should no	t be pronounced. B	isted and orde	red that: Ti	he defendant
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Les Deasons of 5/28/76

76-CR-44

-v-

NOTICE OF MOTION

MICHAEL J. TICHE,

Defendant.

SIR:

PLEASE TAKE NOTICE that on May 17, 1976 at 10:00 A.M., in the United States Courthouse and Post Office, Albany, New York, defendant, MICHAEL J. TICHE, will move for an Order:

- A. Dismissing the Indictment, with prejudice, on the ground that a mistrial occurred herein due to a jury disagreement, a new trial was ordered, and the new trial did not occur within sixty (60) days thereafter (Interim Plan Pursuant to the Provisions of the Speedy Trial Act of 1974, P. L. 93-619, NDNY, paragraph 7);
 - B. Directing the Government to disclose to defendant, and where documents are involved, to provide defendant with true and correct copies thereof, of the following mathers relating to co-defendant and Government witness, John Walter Shaw:
 - all recommendations or representations for leniency or favorable treatment of SHAW by any representative of the United States Government, including but not limited to persons employed by the United States Attorney's Office for the District of Connecticut, the Criminal Division of the Department of Justice and the Federal Bureau of Investigation ("FBI") to:

graited

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a) the Hon. Jon O. Newman, U.S.D.J., who sentenced Shaw;

- b) any United States Probation Officer;
- of Prisons;
- office and of the District Attorney's Office and of the Court of the County in Connecticut having jurisdiction of criminal offenses committed by defendant Shaw;
- 2) internal memoranda reports and correspondence of the United States Attorney's
 Office for the District of Connecticut, and of the Criminal Division of the Department of Justice and the FBI, relating to lenient or favorable treatment of Shaw;
- 3) all negotiations, agreements and understandings, oral or written, between the Government and Shaw or Shaw's attorney relating to leniency or favorable treatment by the Government to Shaw in return for Shaw's cooperation with the Government; this includes, but is not limited to, oral promises or representations to Shaw or his attorney by FBI agents and attorneys of the U. S. Attorney's Office from the time of the initial interrogations or interviews with Shaw to the present and continuing until the conclusion of this retrial;
 - 4) all correspondence or other documents between any official or agency of the Government and the District Attorney's Office of the County in Connecticut having jurisdiction of state crimes committed by Shaw, and the state court having such jurisdiction, relating to recommendations for leniency or favorable representations by the Government on behalf of Shaw, and oral negotiations with said District Attorney's Office seeking lenient State treatment of Shaw in return for his cooperation with federal officials;
- 5) a copy of Shaw's Presentence Report, submitted by the U. S. Probation Office to the U. S. District Court for the District of Connecticut;

ganted

6) the number of times Shaw conferred with officials of the FBI and the U.S. Attorney's Office for the purpose of preparing for giving testimony against his co-defendants, the dates and the length of such conferences;

ounted

7) records reflecting the payment of money or other things of value, including living expenses, by the Government to or on behalf of Shaw;

granted

8) records or documents relating to psychiatric treatment of Shaw;

gianted

9) information known to the Government relating adversely to the credibility and the mental or emotional condition of Shaw:

Partied.

C. Suppressing as evidence, any fingerprints and any box or carton bearing or containing such fingerprints that were seized without a warrant from an automobile at LaGuardia Airport, New York, New York on or after March 2, 1975, and any photographs or charts relating thereto; and

D. Such other, further and different relief as the Court finds just and proper.

WILLIAM J. QUINLAN

WILLIAM J. QUINLAN
Attorney for defendant,
MICHAEL J. TICHE
Office & P. O. Address:
133 Wall Street
Schenectady, New York 12305
Telephone: (518) 346-1221

TO: HON. PETER C. DORSEY
UNITED STATES ATTORNEY
District of Connecticut
270 Orange Street
P. O. Box 1824
New Haven, Connecticut 06508
Attention:
William F. Dow, III
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

76-CR-44

-v-

AFFIDAVIT

MICHAEL J. TICHE,

Defendant.

STATE OF NEW YORK

ss.:

)

COUNTY OF SCHENECTADY)

WILLIAM J. QUINLAN, being duly sworn, deposes and says:

- 1. I am the attorney for defendant MICHAEL J. TICHE. I respectfully submit this affidavit in support of TICHE's motion:
 - a) to dismiss the Indictment for failure of the Government to comply with this Court's Interim Plan pursuant to Rule 50(b), Fed. Rules Crim. Proc. and the Speedy Trial Act of 1974;
 - b) for disclosure of facts relating to leniency and favorable treatment given by the Government to JOHN WALTER SHAW, the key prosecution witness against TICHE, and for other d. closure relating to SHAW;
 - c) to suppress fingerprints allegedly of TICHE that were seized without a warrant.

LACK OF SPEEDY TRIAL

2. Originally, this prosecution resulted from an Indictment brought in the United States District Court for the District of Connecticut (Crim No. N-75-59). The Indictment charged

defendant MICHAEL J. TICHE and others with conspiracy and interstate transportation of explosive and other devices resulting in the demolition of a factory in Shelton, Connecticut.

- 3. The case was brought to trial before the Hon. Jon O. Newman and a jury in September, 1975. On February 11, 1976, the jury which had rendered verdicts of convictions and acquittals of other defendants, reported it could not agree on a verdict as to defendant MICHAEL J. TICHE, and a mistrial was ordered.
- 4. Subsequently, the retrial was transferred to the Northern District of New York on the ground that unfavorable publicity in Connecticut made it unlikely defendant could obtain a fair retrial there. At no time did TICHE's attorney in the District of Connecticut prosecution, Thomas Clifford, Esq., waive any of TICHE's rights for a speedy trial or retrial in return for the transfer out of the District of Connecticut.
- 5. The desirability of a speedy disposition of federal criminal cases has been taken from the area of discussion and debate and has been imposed, rightly or wrongly, upon the courts. This process has been begun by Congress in the Speedy Trial Act of 1974 (18 U.S.C., Chapter 208) and has been added to and intensified by the Judges overseeing the operations of the Courts of the Second Circuit. Pursuant to these overseeing strictures, the Judges of the Northern District of New York adopted rules designated:

"The Interim Plan Pursuant to the Provisions of the Speedy Trial Act of 1974" (A copy of this Plan is annexed to this affidavit as Exhibit A).

- 6. The Interim Plan became effective on September 29, 1975. It should be noted that the Interim Plan expressly states that it is issued not only in conformity with the Speedy Trial Act but also "pursuant to the requirement of Rule 50,b) of the Federal Rules of Criminal Procedure" (Opening paragraph, Interim Plan). It is, therefore, "the Bible", duly approved by the Circuit reviewing panel, governing what is and what is not a speedy trial.
- 7. The Interim Plan, when referring to the time a trial must begin, after indictment, provides for "excluded periods" -- i.e., allows for excuses why time deadlines are not met. However, no such flexibility or excluded periods are provided in the Interim Plan as to the deadline for a retrial that does not follow an appeal or collateral attack. Here the rule is flat and definite:

"Where a new trial has been ordered by the District Court or a trial or new trial has been ordered by an Appellate Court, it shall commence at the earliest practicable time, but in any event, not later than 60 days after the finality of such order." (Paragraph 7)

Provisions for delay are included, but <u>only</u> if a retrial follows appeal or collateral attack:

"If the defendant is to be retried following an appeal or collateral attack, the court trying the case may extend such period for a total not to exceed 180 days from the date on which the order occasioning the retrial becomes final, where unavailability of witnesses or other factors resulting from passage of time shall make trial within 60 days impractical." (Paragraph 7)

- 8. Here, the retrial of the TICHE case, resulting from a jury disagreement, does not follow an appeal or collateral attack. The retrial has not occurred, as it had to "in any event" not later than 60 days thereafter. The result, if the Interim Plan is to be complied with, must be a dismissal. It cannot be assumed that the Judges of the Second Circuit reviewing panel would have let this directory language slip through if they did not mean it to stand. The Speedy Trial Act may not require this, but the Second Circuit can and did go further than the Act if, in its wisdom, it wishes to go one better than Congress in accelerating prompt disposition of cases within its domain.
- be dismissed, the consequence of failure to bring him to retrial within the limits of the Interim Plan. A further consequence would be to spare the resources of this Court from retrying a defendant that the Connecticut jury, after five months of trial, could not agree should be convicted.

DISCLOSURE RELATING TO SHAW

10. As noted earlier, the Indictment was brought against several defendants, of whom MICHAEL J. TICHE was one. A review of the voluminous transcript of the first trial and of the FBI reports pertaining to it, indicated that MICHAEL J. TICHE was not shown, even by the Government's testimony, to be one of the princips participants in the alleged conspiracy. He was not shown to have conceived it, or to have profited to any substantial

degree. The substance of the Government's case at the first trial appeared to be that TICHE was seen with the other defendants, that he signed into a motel with them using a false name, that his fingerprint was found on a box located in a car once driven by a co-defendant to LaGuardia Airport and that TICHE loaded boxes of explosives, was paid money for it, traveled from Pennsylvania to Connecticut with knowledge that he was to help explode a factory and went inside the factory to do so.

- 11. The only evidence of the latter, highly incriminatory actions of TICHE came from one witness -- JOHN WALTER SHAW. Without such testimony, the proof against TICHE would have been so weak as probably to require a dismissal at the end of the Government's case.
- against TICHE, no w retapped evidence was submitted, no proof of TICHE's statements, knowledge and intent were offered to the jury, other than through Shaw. All depended upon the testimony of one man -- SHAW. Thus, on the retrial, SHAW will be the key, indispensible Government witness, on whom conviction or acquittal will depend. It is therefore vital that the defense have available to it the basis for demonstrating to the jury any bias, prejudice or ulterior reasons SHAW has and whether his credibility can be impeached by showing he is testifying as the result of promises of leniency and favorable treatment.
- 13. Originally, SHAW was charged in the federal indictment with a series of federal crimes, and he was also charged in a

Connecticut state indictment with the several serious state crimes of 1st degree arson and 1st degree burglary. The cumulative penalties for all these charges exceeded 100 years. While such a total was unlikely to be imposed, substantial long sentences could well have been expected by SHAW, based upon the gravity of the thimes, the fact that hundreds of workers lost their jobs as a result of the explosion and the intense community interest in the case. Indeed, those co-defendants who were convicted received heavy sentences of over 10 years in the federal court and are awaiting state trials which could result in further imprisonment.

- 14. SHAW, however, pleaded guilty and testified for the Government. He was not sentenced until after the conclusion of his testimony and his hopes and expectations of leniency bear on that testimony (at the second trial, he will of course be committed to his testimony in the first). It is essential for the defense to know the ingredients of any bargain that may have been struck for SHAW's cooperation, what statements were made to him by FBI agents or prosecutors as to what benefits he would obtain for such cooperation, and the facts that could have colored his testimony.
- 15. SHAW, as the result of discussions between the federal and state prosecuting authorities has now been sentenced to serve no more than five years, in federal confinement, in full satisfaction of all federal and state charges ainst him. From this

leniency he is still seeking even more relief -- on April 21, 1976, SHAW made a motion for reduction of his sentence and asked that the motion not be heard until after his testimony in this retrial of MICHAEL J. TICHE. (A copy of SHAW's motion to reduce his sentence is annexed to this affidavit as Exhibit B.)

- 16. SHAW's testimony is obviously crucial to the prosecution and the means to impeach it are crucial to the defense.

 The items set forth in the Notice or Motion list the disclosure requested. Since the Government has treated this as an "open file" case, any technical objections would not seem appropriate, particularly after five months of trial in Connecticut.
- 17. The disclosure requested pertaining to SHAW in the Notice of Motion relates to:

Recommendations or representations for leniency by any Government official to the sentencing judge, the United States Probation Office, the Federal Bureau of Prisons and the State Court and District Attorney's Office (B. (1)).

Internal memoran a and correspondence among Government prosecuting officials relating to leniency for SHAW (B. (2)).

Negotiations, agreement and understandings between the Government and SHAW or SHAW's attorney relating to treatment (B. (3)).

Correspondence between the Federal and State officials relating to leniency for SHAW pertaining to his State sentence (B. (4)).

A copy of the presentence report submitted to Judge Newman on the sentencing of SHAW (B. (5)).

The above information is essential both for the cross-examination

of SHAW as to his self-interest in testifying on behalf of the Government and as independent proof for the jury as to his bias, prejudice and interest. As noted in defendant's Memorandum of Law submitted with this motion, matters bearing on the self-interest or bias of a witness are entitled to be presented by the defense and this is particularly so when the witness involved is a key or "star witness" for the prosecution.

- 18. The Notice of Motion also seeks information relating to the number and lengths of conferences by SHAW with the prosecuting officials (B. (6)), records reflecting payments to SHAW by the Government (B. (7)), relating to any psychological treatment of this witness (B. (8)), and information known to the Government relating adversely to his credibility, mental and emotional condition (B. (9)).
- 19. All this information is vital to the defense for use at the trial since the Government's case against TICHE, as a practical matter, will stand or fail with the credibility of SHAW.

SUPPRESSION OF FINGERPRINTS

20. The fingerprints of other evidence referred to in item C. of the Notice of Motion were seized by the FBI without a warrant, and the burden thus is upon the Government to justify that seizure.

21. It is, therefore, respectfully submitted that the motion of the defendant, MICHAEL J. TICHE, be granted in all respects.

Willi J. Gumlan

Sworn to before me this 11 th day of May, 1976.

Maura X. Clair Notary Public

MAURA L. CLAIR

NOTARY PUBLIC, STATE of NEW YORK
RESIDING IN SCHENICTADY COUNTY

0542880

THE INTERIM PLAN PURSUANT TO THE PROVISIONS OF THE SPEEDY TRIAL ACT OF 1974 P.L. 93-619

Pursuant to the requirement of Rule 50(b) of the Federal Rules of Criminal Procedure effective October 1, 1972, and in conformity with the provisions of the Speedy Trial Act of 1974 (Chapter 208, Title 18, U.S.C.), and the Federal Juvenile Delinquency Act as amended (18 U.S.C. §§5035, 5037), the judges of the United States District Court for the Northern District of New York have adopted the following plan to minimize undue delay and to further the prompt disposition of criminal cases:

1. Priorities in Scheduling Criminal Cases

Insofar as is practicable:

- (a) The trial of criminal cases shall be given preference over civil cases, as provided by Rule 50(a) Federal Rules of Criminal Procedure; and
- (b) The trial of defendants in custody and high risk defendants should be given preference over other criminal cases. As used in this plan, "custody" means custody on the Federal charge contained in the pertinent complaint, information, or indictment. As used in this plan, a "high risk defendant" means a defendant not in custody.
 - (i) whose chances of appearing at his trial or other court proceedings have been judicially determined to be poor; or,

- (ii) reasonably designated by the United States Attorney as posing a danger to himself or any other person, or to the community.
- 2. Review of Defendants in Custody and Delinquent Cases
 - (a) The United States Attorney of this District shall submit to the Chief Judge of the Circuit and the Chief Judge of the District Court reports of defendants in custody, high risk defendants, and delinquent cases as prescribed by the Circuit Executive, with approval of the Chief Judge of the Circuit. Copies shall be furnished each District Court Judge and the Circuit Executive. In addition to monthly case reports (Form 74 and 74A), these reports shall include a biweekly report on revised Form 73 of all persons in custody awaiting action in this district, including juveniles, and all high risk defendants, which shall set forth the date on which the time for trial of each defendant begins to rin and which shall report any action taken during the reporting period pursuant to paragraphs 4 or 11 for non-compliance with the time requirements for commencing trial.
 - (b) At not more than six-month intervals the judges of the court, or a committee thereof, shall review the status of all persons in custody and all cases in which the maximum time limits set forth in Rules 3 and 5 have been exceeded. Cases shall be reassigned as appropriate in order to carry out the purposes of this plan. The United States Attorney shall be informed of any case in which his office appears to be responsible for unnecessary delay.

- 3. Time Requirements for Trial of Defendants in Custody and of High Risk Defendants
 - (a)(1) Trial of a defendant held in custody solely for the purpose of trial shall commence within 90 days following the beginning of continuous custody.
 - (2) Trial of a high risk defendant shall commence within ninety days of the determination or designation as "high risk", or within ninety days of the effective date of this plan, whichever date is later.
 - (b) (1) Where a defendant is apprehended outside this district and held in custody and his case is initially processed under Rule 20 of the Federal Rules of Criminal Procedure, the times set out above shall begin to run where the defendant rejects disposition under Rule 20.
 - (2) Where a defendant is apprehended outside this district and is held in custody (except for cases initially processed under Rule 20), the times set out above shall begin to run:
 - (i) Upon the beginning of the defendant's continuous custody, if the arrest was pursuant to a warrant issued on an indictment or information filed in this district;
 - (ii) Upon the finding and recommendation or order by a magistrate that a warrant of removal shall issue, if the defendant's arrest was not pursuant to such a warrant.
 - (3) Where a defendant is apprehended outside this district and is released pursuant to the provisions of

Chapter 207, Title 18, U.S.C., the times set out above shall begin to run when the defendant returns to this district.

4. Effect of Non-Compliance

- (a) Upon the expiration of the time limits prescribed by Section 3:
- (1) A defendant in custody solely because he is awaiting trial and whose trial has failed to commence through no fault of the accused or his attorney shall be released subject to such conditions as the court may impose in accordance with 18 U.S.C. 3146.
- (2) A high risk defendant whose trial has failed to commence through no fault of the attorney for the government shall have his release conditions automatically reviewed by the court. A high risk defendant who is found by the court at that time to have intentionally delayed the trial of his case shall be subject to an order of this court modifying his non-financial conditions of release under Chapter 207, Title 18, U.S.C., to insure that he shall appear at trial as required.

5. All Cases: Trial Readiness and Effect of Non-Compliance

In all cases the government must be ready for trial within six ponths from the date of the arrest, service of summons, detention, or the filing of a complaint or of a formal charge upon which the defendant is to be tried (other than a sealed indictment), whichever is earliest. If the government is not ready for trial

within such time, and if the defendant is charged only with non-capital offenses, the defendant may move in writing, on at least ten days' notice to the government, for dismissal of the indictment. Any such motion shall be decided with utmost promptness. If it should appear that sufficient grounds existed for tolling any portion of the six-months period under one or more of the exceptions in Rule 6, the motion shall be denied, whether or not the government has previously requested a continuance. Otherwise the court shall enter an order dismissing the indictment with prejudice unless the court finds that the government's neglect is excusable, in which event the dismissal shall not be effective if the government is ready to proceed to trial within ten days.

6. Excluded Periods

In computing the time within which the government should be ready for trial under Rule 5, the following periods should be excluded:

- (a) The period of delay while proceedings concerning the defendant are pending, including but not limited to proceedings for the determination of competency and the period during which he is incompetent to stand trial, pre-trial motions, interlocutory appeals, trial of other charges, and the period during which such matters are sub judice.
- (b) Periods of delay resulting from a continuance granted by the District Court at the request of, or with the consent of, the defendant or his counsel, in writing or stated upon the record. The District Court shall grant such a continuance only if it is satisfied

that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges. A defendant without counsel should not be deemed to have consented to a continuance unless he has been advised by the court of his rights under these rules and the effect of his consent.

- (c) The period of time during which:
 - (i) evidence material to the government's case is unavailable, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period; or
 - (ii) the prosecuting attorney is actively preparing the government's case for trial and additional time is justified by exceptional circumstances of the case.
- (d) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever his location is unknown. A defendant-should be considered unavailable whenever his location is known but his presence for trial cannot be obtained by due diligence.
- (e) A reasonable period of delay when the defendant is joined for trial with a coderendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case.

- (f) The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial.
- (g) The period during which the defendant is without counsel for reasons other than the failure of the court to provide counsel for an indigent defendant or the insistence of the defendant on proceeding without counsel.
- (h) Other period of delay occasioned by exceptional circumstances.

7. Retrials

Where a new trial has been ordered by the District Court or a trial or new trial has been ordered by an Appellate Court, it shall commence at the earliest practicable time, but in any event, not later than 60 days after the finality of such order. If the defendant is to be retried following an appeal or collateral attack, the court trying the case may extend such period for a total not to exceed 180 days from the date on which the order occasioning the retrial becomes final, where unavailability of witnesses or other factors resulting from passage of time shall make trial within 60 days impractical.

8. Demand and Waiver Provisions

A demand by a defendant is not necessary for the purpose of invoking the rights conferred by these rules. However, failure of a defendant to move for discharge

prior to plea of guilty or trial shall constitute waiver of such rights. The preceding private shall not apply to a defendant without counser unless he has notice of these rules.

- 9. Procedures Intended to Facilitate Prompt Disposition of Cases
 - (a) Pre-trial conferences pursuant to Rule 17.1, Federal Rules of Criminal Procedure, shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.
 - (b) The court or magistrate at the time of arraignment or at the time of any proceeding preliminary to arraignment shall promptly appoint counsel where appropriate under the Criminal Justice Act and Rule 4 of the Federal Rules of Criminal Procedure. If a defendant appears for arraignment without counsel his arraignment may be postponed not more than one week, except for good cause shown, to permit him to obtain or to consult with counsel. When appropriate the court may cause a plea of not guilty to be entered for the defendant. The court shall take adequate steps to ensure that defendants are represented by counsel.
 - (c) A trial date shall be set at the time of pre-trial conference or at the earliest practicable time thereafter.
 - (d) If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contenders or a conviction.

- (e) A defendant shall ordinarily be sentenced within 45 days of the date of his conviction or plea of guilty or nolo contendere. This specific period, however, may be varied in accordance with the presentence report practices and procedures in this District.
- 10. Responsibility of United States Attorney and Defense Counsel
 - (a) The court has sole responsibility for setting and calling cases for trial. Neither a conflict in schedule of Assistant United States Attorneys nor a conflict in schedules of defense counsel will be ground for a continuance or delayed setting except under musual circumstances approved by the court and called to the court's attention at the earliest practicable time. Each judge will schedule criminal trials at such times as may be necessary to assure pumpt disposition of criminal cases. The United States Attorney will familiarize himself with scheduling procedures of each judge and will assign or reassign cases in such manner that the government will be able to announce it is ready for trial.
 - (b) If the United States Attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a federal, state, or other in titution or that of another jurisdiction, it is his duty promptly:
 - (i) to undertake to obtain the presence of the prisoner for plea and trial; or
 - (ii) when the government is unable to obtain the presence of the defendant, to cause a detainer

to be filed with the official having custody of the prisoner and request him to advise the prisoner of the detainer and to inform the prisoner of his rights under the Federal Rules of Criminal Procedure and this plan.

- (c) If a defendant is being held in custody awaiting trial, the United States Attorney shall be responsible for advising the court at the earliest practicable time of the date of the beginning of custody.
- (d) It is the responsibility of the United States Attorney to advise the court at the earliest practicable time (usually at the hearing with respect to bail) that the defendant is considered a high risk defendant.

11. Juvenile Proceedings

(a) An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date upon which such detention was begun.

Upon the expiration of such time limit, on the motion of the alleged delinquert or at the direction of the court, the case shall be dismissed, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel or was consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Except in extraordinary circumstances, an information dismissed under this provision may not be reinstituted.

- (b) If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. §5037(c).
- 12. This plan shall become effective on September 29,

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA.

PLAINTIFF

VS

CRIMINAL NO. N-75-59

LLHN SHAW,

DEFENDANT

MOTION FOR CORRECTION OF REDUCTION OF SENTENCE

The Defendant hereby moves for a correction or reduction of sentence pursuant to Rule 35, F.R.Cr. P. The Defendant specifically requests the Court to amend the sentence to include an 18 U.S.C. \$4208(a)(2) designation.

In addition, the Defendant requests that the Court smend the sentence to take into account the time between except and sentence. Much of this time was spent assisting the United States or waiting to testify on behalf of the United States or the State of Connecticut.

The Defendant requests a hearing on this motion at a convenient date after he has completed his testimony in the upcoming trials in <u>United States of America vs Michael Tiche</u> and State of Connecticut vs An hony Just et al.

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THE DEFENDANT, JOHN SHAW

Dated: April 21, 1976

3y:

CLENDENEN & LESSER
152 Temple Street ...
New Haven, Connecticut 06510
203/787-1183

CERTIFICATION:

This is to certify that a copy of the foragoing was mailed, postage prepaid, to:

Peter Dorsey, Esquire
United States District Court
No. 141 Church Street
New Haven, Connecticut

on this Twenty-First Day of April, 1976.

Sala to setting the

William H. Clendenen, Cr.

UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

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: NO.: 76-CR-44

MICHAEL J. TICHE

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RESPONSE TO DEFENDANT'S MOTION TO DISMISS

The United States of America, through the undersigned Assistant United States Attorney, respectfully requests that the Defendant's Motion To Dismiss the instant case for failure to initiate a retrial within 10 days be denied.

CHRONOLOGY OF THE CASE:

- 1. On May 8, 1975 Michael Tiche and nine co-defendants were indicted on charges based on the firebombing of the Sponge Rubber Products Company Plan No. 4 in Shelton, Connecticut on March 1, 1975. Trial began on October 6, 1975 after several weeks of pre-trial proceedings.
- 2. On February 11, 1976, Defendant Tiche's Motion for Mistrial was granted when the jury indicated it could not agree on a unanimous verdict. The Government immediately informed the Court that Michael Tiche would be retried.
- On February 19, 1976, Tiche's appointed counsel filed a Motion to Withdraw.
- On March 26, 1976, Defendant Tiche filed a Motion for a Change of Venue.
- 5. On March 29, 1976, a hearing was held on both Motions.
 (A transcript of that proceeding is attached as Appendix A).
- 6. On March 31, 1976, Judge Newman granted counsel's Motion to Withdraw and the Defendant's Motion for Change of Venue. (A copy of the ruling on the venue motion is attached as Appendix B).

At the same time the Government informed the Court and defendant, that it was ready to commence retrial immediately.

7. The case will be called by this Court on May 17, 1976. DISCUSSION:

The Defendant contends that this case must be dismissed because a retrial has not commenced within 60 days of the declaration of mistrial on February 11, 1976. The Government disagrees. The complexities of the case, the logistics of the transfer from the District of Connecticut to the Northern District of New York, and the appointment of new counsel, when measured by the standards of Rule 6 of the Plan for Achieving Prompt Disposition of Criminal Cases of the District of Connecticut (Appendix C) or by paragraphs (a) and (b) of 18 U.S.C. 3161, provide ample basis for extending the time for retrial. UNITED STATES v. JOOST, GULLETTE & ZINNI, Crim. No. H-524 (D. Conn., May 29, 1975) (Newman, J.) (copy attached).

As indicated in <u>JOCST</u>: <u>Supra</u>, it is unclear whether the time period involved after the declaration of a mistrial is properly gauged by Rule 6 of the <u>Correcticut</u> Plan or by the appropriate subsections of the Speedy Trial Act. Nevertheless, it is clear that this case is not governed by the provisions of the Interim Plan Pursuant to the Provisions of the Speedy Trial Act of 1974 of the Northern District of New York. As stated by the Defendant, the Pule set forth in paragraph 7 of the Northern District Plan is "flat and definite". That paragraph states:

Where a new trial has been ordered by the District Court . . . it shall commence at the earliest practicable time, but in any event, not later than 60 days after the finality of such order.

(Emphasis supplied.)

This Plan, drafted and adopted by the United States District Court for the Northern District of New York must be read to apply to proceedings within the Northern District. Thus, the reference in paragraph 7 to a new trial ordered by "the District Court"

refers to an order for new trial issued by the District Court for the Northern District of New York. The Northern District Plan, for better or worse, does not deal with retrials which have been ordered by the District Court of a foreign district and transferred to the Northern District for trial.*

This is a Connecticut case. The crimes occurred in that District and the charges filed and the original trial conducted there. More importantly the retrial was ordered by the United States District Court for the District of Connecticut. Thus, Rule 6 of the Plan for Achieving Prompt Disposition of Criminal Cases of the District of Connecticut, or, alternatively, the provisions of the Speedy Trial Act, govern the issumpresented here. Paragraph 6 of the Connecticut Plan provides:

6. Retrials.

Where a new trial has been ordered by the district court or a trial or a new trial ordered by an appellate court, it shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless extended for good cause.

(Emphasis supplied.)

96 days will have passed from the date of declaration of mistrial to May 17, 1976; however, for the reasons articulated above — the complexities of the case, the logistics of transfer from the District of Connecticut, and the appointment of new counsel ——

Even if the provisions of paragraph 7 of the Northern District Plan were applied to this case, trial could easily commence within the 60 days the Plan requires. This case was ordered transferred to the Northern District on March 31, 1976. Transfer was effected sometime after April 12 and using that as a starting point, 60 days has yet to expire.

the Government submits that sufficient "good cause" exists for an extension of the ninety-day period prescribed by Rule 6. The Defendant should not be penalized for exercising his right to move for a change of venue, but neither should he be rewarded by dismissal of the inevitable logistical difficulties attendant upon the success of his motion.

The Government has been prepared to retry this matter since February 11, the date of mistrial. However, the transfer of the case from the District of Connecticut to the Northern District of New York and the appointment of new counsel have created problems that prevented immediate retrial. The original trial, from pre-trial motions through the Michael Tiche mistrial, lasted more than 80 court ays. The Federal Bureau of Investigation conducted an extensive, nation-wide investigation of the arson and compiled more than fifty lengthy reports. When Tiche's original trial counsel was allowed to withdraw and the case transferred to this District, new counsel was appointed. If Michael Tiche was still represented by his original counsel who was familiar with the case, the retrial could have commenced immediately, regardless of venue. Now, in order to fully represent his client, new counsel must review not only the lengthy reports of the Federal Bureau of Investigation, but the extensive trial record as well.

The change of venue was ordered by the trial court in the District of Connecticut because it determined that the "flexibility" of the federal system would minimize the difficulties in jury selection at the retrial. The court did not find that it would

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The Government has attempted to ease that burden by providing counsel with complete copies of all FBI reports save one (which was presented to the trial court for in camera inspection) a list of prospective Government witnesses and is in the process of providing the Jencks Act statements of those witnesses in advance of trial. Also, the exhibits which the Government may introduce at the trial of this matter are en route to Albany in advance of trial for examination by counsel for the defendant.

be impossible for Michael Tiche to obtain a fair trial in
the District of Connecticut because there was a great prejudice
against him. Rule 21(a), F.R. Crim. P. (Transcript of Hearing
on Motion for Change of Venue, p. 6). In summary, the
Government submits that the circumstances described provide
ample od cause" for this Court to extend the 90 day period in
accordance with the Rule 6 of the Connecticut Plan. JCOST, supra.

As indicated, there is some question whether the provisions of the Speedy Trial Act relating to retrials are in effect at this time, <u>JOOST</u>, <u>supra</u>; if so, then 18 U.S.C. 3161(e), which requires retrial after a mistrial within 60 days, supercedes Rule ****
6 of the Connecticut Plan. But as Judge Newman noted in JOOST, subsection (e) is in effect, then so also is subsection (h) which sets forth excludable periods of delay not to be calculated in determining the time of trial or, in this case, the retrial. Thus, under 18 U.S.C. 3161(h) 1 (F), the delay resulting from the change in venue from the District of Connecticut to this District is "excludable". Similarly "excludable" under 18 U.S.C. 1361(h)1 (G) are thirty days of the period during which the Motion to

The Government, in its response to the Defendant's Motion for Change of Venue, advised the defendant of the likelihood of delay if the motion were granted. (Transcript of Hearing on Motion, p.3; Government's Response to Defendant's Motion for Change of Venue) (Appendix D).

⁽e) If the defendant is to be tried again following a declaration by the trial Judge of a mistrial, the trial shall commence within sixty days from the date the action occasioning the retrial becomes final.

⁽h) The following periods of delay shall be excluded . . . in computing the time within which the trial of any such offense must commence:

⁽¹⁾ Any period of delay resulting from other proceedings concerning the defendant, including but not limited to - - -

Withdraw was under advisement in the District of Connecticut. (February 19, 1976 to March 31, 1976.)

In conclusion, the Government submits that the realities of this case require the denial of Defendant's Motion.

Respectfully submitted,

WILLIAM F. DOW, III

ASSISTANT UNITED STATES ATTORNEY

CERTIFICATE OF SERVICE

This is to certify that a copy of the within and foregoing Response to Defendant's Motion to Dismiss was mailed this 15th day of "y, 1976 to William Quinlan, Esquire, Mead, Begley & Quinlar 133 Wall Street, Schnectady, New York.

WILLIAM F. DOW, III Pro-ASSISTANT UNITED STATES ATTORNEY

***** (cont'd.)

- (F) delay resulting from proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure; and
- (G) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisment.

IN THE UNITED STATES DISTRICT COURT		
FOR THE DISTRICT OF CONNECTICUT		Appendix A
	x	111
THE UNITED STATES OF AMERICA	:	
vs.	:	Criminal Action
CHARLES D. MOELLER, et al.,	:	No. N-75-59

Before the Hon. Jon O. Newman United States District Judge New Haven, Connecticut March 29, 1976

Motion - Change of Venue - Michael Tiche

For The Government:

PETER C. DORSEY, U. S. Actorney WILLIAM F. DOW, Asst. U. S. Attorney New Haven, Connecticut

For The Defendant:

THOMAS D. CLIFFORD, Esq. Hartford, Connecticut

This is to certify at the within 7 pages is a true and accurate transcript

Official Reporter

89

MR. CLIFFORD: The United States versus Michael Tiche case. I have filed on behalf of Mr. Tiche, who is present today in the courtroom, a motion for a change of venue. I requested that, if that motion was going to be objected to, that I be given an opportunity for an evidentiary hearing to produce the supporting documents and testimony. The government has filed a response indicating they do not object to the change of venue, as far as I know. The question left is to what seat of court does the change of venue take place. I am assuming your Honor's concurrence in the motion and the government's non-objection to that motion for a change of venue. I had suggested in my motion as I recall, four seats of court: Pittsburgh, Buffalo, Cincinati or Cleveland. I think that all four of those are convenient to the defendant. They are convenient to the bulk of the witnesses which I assume the government will be using in the case against Michael Tiche. They are large metropolitan areas with a number of sitting judges, so that the -- this case will not create an undue problem in the administration of the docket in the district to which it is being sent. I think that I have some reservations about Pittsburgh, your Honor, only -- while the most convenient to my client and, I think, most convenient to the majority of the government witnesses, I am concerned about the amount of publicity that might have attached to the previous trial in that city and I have really no way of knowing that. I'd suspect, of the four places that I have suggested to the Court, that that should be

the -- listed as number four of the four that I suggested. I
think that in the order of our desire as to where they ought to
go, I would think that Buffalo would be number one, Cleveland
number two, Cincinnati number three and Pittsburgh number four.
Buffalo is approximately four hours from the Pittsburgh area,
't's in the Western District of New York, it sits in the Rochester
Buffalo and, even, perhaps in Erie, although -- no, it doesn't
sit in Erie; I know that. There are a number of sitting judges
in that district, as I recall, and I don't imagine that there's
been any publicity in the area, any undue amount of publicity,
concerning this problem in the previous trial, and I would sugthat to the Court.

while I am here, the government in its moving papers has asked some sort of a waiver of a speedy trial, or whatever else that's supposed to mean. I'm indicating to the Court that I am not about to waive that on behalf of my client. The very filing of a motion for change of venue may have a legal effect that may in some way come within the provisions of that act and when his attorney in the forwarding district sees the five-foot high file that's involved here, there might be further motions at that end and that's the appropriate time and place, I think, to make any sort of an adjudication on that. But I don't think it's incumbent upon me to make any sort of a waiver, nor

THE COURT: I take it your motion to withdraw is

still pending?

MR. CLIFFORD: Yes, sir, if it gets transferred out.

THE COURT: You don't expect to follow it?

MR. CLIFFORD: I don't expect to follow the case,

your Honor. Unle can make it Jackson Hole, Wyoming in the

month of August, I might be willing to do that, or Lake Louise,

or someplace like that.

MP. DOW: Speaking to the last point, I think at the very least the defendant should be apprised by the Court of the possible consequences of a change of venue in terms of the delay of trial. Perhaps Mr. Clifford is correct that this would be an inappropriate time to elicit some waiver from him, but he should know the likelihood of delay beyond the sixty days is great just because of the possibility of a new attorney entering into the file and the need for him to familiarize himself with the case.

As to the location, the government isn't propared to request any specific seat of court. However, I think, just in terms of the logic of it, it would be appropriate to keep the case somewhere within this circuit; that is, Vermont, Westerr District of New York, perhaps, Northern District of New York, perhaps the Southern District, although there might be a publicity problem there, and perhaps the Bastern District. I should advise the Court that there happens to be somewhat of a problem in the

Albany -- I guess that's the Northern District -- I think a judge problem, one of the judges is ill and the judicial manpower's down up there.

MR. CLIFFORD: My recollection is that Judge

Port has just either resigned or has -- I think he has resigned,

I think he was in senior status, I think he's retired completely,
which I think just leaves Judge role.

MR. DORSEY: Actually, it leaves just Foley, but Judge Port has had a heart attack and is not presently actively sitting and what they are doing is filling in a second judge mostly from the Southern District on a scheduled basis, and if there is -- we felt that there was a much greater logic from the point of geographic propinquity to continue in Albany, and we felt that -- and I have consequently made an inquiry there, and before any reference of the case to Albany was made, the suggestion made by the I. Attorney in Albany was that you, It is, your Honor, talk to Chief Judge Foley of that district because of scheduling problems.

MR. CLIFFORD: I would object to that, your Honor.
There is only one sitting judge, as far as I know, in that district. It is an unbearable city, to begin with, and it's doubly unbearable in the summertime. And it is a -- the five months that's been spent in this courtroom has been an inconvenience to my client and I think that somewhere along the line in a re-trial that there ought to be some consideration given to his requirements.

Albany is further than here. I have not been able to plot it out. There are no direct highways or throughways other than through New York City and up. Buffalo, as I have suggested, is four hours away, in this circuit, has a number of sitting judges in the Western District, as I recall.

THE COURT: Well, it's a very busy district.

I think they just got their third judge and I think their caseload is probably the highest in the circuit. Well, I think what
I will do is handle it this way.

The claim for change of venue is a strong claim.

I don't mean to suggest, particularly with pending state cases, that a fair trial cannot be obtained in this jurisdiction, but the federal system does have more flexibility in these matters than the state system, and where there is a substantial demonstration of publicity because of the trial, it seems appropriate to use the flexibility of the federal system to have the re-trial in another jurisdiction. So I will very likely grant the moticu, but I will reserve decision on it until I have made appropriate inquiry to take into account trial calendars in making a determination as to the new location. I think there is some merit in keeping it within the circuit, if that is feasible. And there are the concerns of both the witnesses from the Pittsburgh area and the witnesses from the Connecticut area. So I will reserve

the transferring jurisdiction when I rule on it.

MR. CLIFFORD: Thank you, your Honor.

MR. DOW: Thank you, your Honor.

MR. DORSEY: Is your Honor going to, at the same time, make a disposition of Mr. C. fford's motion on withdrawa?

THE COURT: Oh, yes. Yes. With the case to be transferred, I would expect to grant Mr. Clifford's motion.

MR. CLIFFORD: Thank you, your Honor.

-00000-

APPENDIX B

mir of 4 55 FH '76

UNITED STATES DISTRICT COURT

U. S. 143 TEICT COURT KEW HAVER, COHN.

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v. :

CRIMINAL NO. N-75-59

MICHAEL J. TICHE

RECEIVED

RULING ON MOTION TO TRANSFER

APR - 1 1975

U. S. ATTORNEY'S OFFICE NEW HAVER, CONNECTICUT

Defendant Michael J. Tiche has moved pursuant to

Fcd. R. Crim. P. 21 for a transfer of the charges pending
against him in this district to another district in view of
the extensive publicity that has occurred in this district.

Defendant was tried along with eight co-defendants in an
extensive trial that lasted five months. As to this defendant
the jury reported a disagreement, and a mistrial was granted,
on the defendant's motion, on February 11, 1976. The Government does not oppose a transfer. Dispute has arisen as to
the appropriate transferee district. Defendant suggests
several sites including Buffalo, New York; the Government
prefers a location more convenient to witnesses from
Connecticut.

The trial received extensive press coverage in this district. While it may be possible to select a jury that could fairly try the defendant, the flexibility that exists within the federal system to minimize the difficulties of empaneling an impartial jury ought to be used in this instance to transfer the trial to another district "in the interest of

justice." Rule 21(b). A site reasonably convenient both to the defendant, who lives in Pennsylvania, and to the numerous Connecticut witnesses is Albany in the Northern District of New York. I have been assured that in the event of a transfer a trial judge will be specially designated to preside at the trial so that the transfer will not impose upon the already overburdened judges of the Northern District.

Accordingly, it is hereby ORDERED that the proceedings in Criminal No. N-75-59 against defendant Michael J. Tiche are transferred to the Northern District of New York.

Dated at New Haven, Connecticut, this 31st day of March, 1976.

Jon O. Newman

United States District Judge

PLAN FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES

(Approved February 28, 1973; Effective April 1, 1973)

Pursuant to the requirement of Rule 50(b) of the Federal Rules of Criminal Procedure effective October 1, 1972, the judges of the United States District Court for the District of Connecticut have adopted the following plan to minimize undue delay and to further the prompt disposition of criminal cases:

- 1. Priorities in Scheduling Criminal Cases.
 - Insofar as is practicable:
 - (a) the trial of criminal cases shall be given preference over civil cases, as provided by Rule 50(a) Federal Rules of Criminal Procedure; and
 - (b) the trial of defendants in custody and defendants whose pre-trial liberty is reasonably believed to present unusual risks should be given preference over other criminal cases. As used in this plan, "custody" means custody on the federal charge contained in the pertinent complaint, information, or indictment.
- 2. Review of Defendants in Custody and Delinquent Cases.
 - (a) The United States Attorney and the United States Marshal of this District shall submit to the Chief Judge of the Circuit and the Chief Judge of the District Court reports of defendants in custody

and delinquent cases as prescribed by the Circuit Executive, with approval of the Chief Judge of the Circuit. Copies shall be furnished each District Court Judge and the Circuit Executive.

- (b) At not more than six-month intervals the judges of the court, or a committee thereof, shall review the status of all persons in custody and all cases in which the maximum time limits set forth in Rules 3 and 4 have been exceeded. Cases shall be reassigned as appropriate in order to carry out the purposes of this plan. The United States Attorney shall be informed of any case in which his office appears to be responsible for unnecessary delay.
- 3. Detained Defendants: Trial Readiness and Effect of Non-Compliance.

In cases where a defendant is detained, the government must be ready for trial within ninety days from the date of detention. If the government is not ready for trial within such time, and if the defendant is charged only with non-capital offenses, the defendant shall be released upon bond or his own recognizance or upon such other conditions as the district court may determine, unless there is a showing of exceptional circumstances justifying the continued detention of the defendant, and then the detention shall continue only for so long as is necessary. This shall not apply to any defendant who is serving a term of imprisonment for another offense, nor to any defendant who, subsequent to release under this rule, has been charged with another crime or has violated the conditions of his release.

4. All Cases: Trial Readiness and Effect of Non-Compliance.

In all cases the government must be ready for trial within six months from the date of the arrest, service of summons, detention, or the filing of a complaint or of a formal charge upon which the defendant is to be tried (other than a sealed indictment), whichever is earliest. If the government is not ready for trial within such time, and if the defendant is charged only with non-capital offenses, the defendant may move in writing, on at least ten days' notice to the government, for dismissal of the indictment. Any such motion shall be decided with utmost promptness. If it should appear that sufficient grounds existed for tolling any portion of the six-months period under one or more of the exceptions in Rule 5, the motion shall be denied, whether or not the government has previously requested a continuance. Otherwise the court shall enter an order dismissing the indictment with prejudice nnless the court finds that the government's neglect is excusable, in which event the dismissal shall not be effective if the government is ready to proceed to trial within ten days.

5. Excluded Periods.

In computing the time within which the government should be ready for trial under Rules 3 and 4, the following periods should be excluded:

(a) The period of delay while proceedings concerning the defendant are pending, including but not limited to proceedings for the determination of competency and the period during which he is incompetent to stand trial, pre-trial motions,

interlocutory appeals, trial of other charges, and the period during which such matters are sub judice.

- (b) Periods of delay resulting from a continuance granted by the district court at the request of, or with the consent of, the defendant or his counsel, in writing or stated upon the record. The district court shall grant such a continuance only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges. A defendant without counsel should not be deemed to have consented to a continuance unless he has been advised by the court of his rights under these rules and the effect of his consent.
- (c) The period of time during which:
 - (i) evidence material to the government's case is unavailable, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period; or
 - (ii) the prosecuting attorney is actively preparing the government's case for trial and additional time is justified by exceptional circumstances of the case.
- (d) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever his location is unknown. A defendant should be considered unavailable whenever his location is known but his presence for trial cannot be obtained by due diligence.

- (e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case.
- (f) The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial.
- (g) The period during which the defendant is without counsel for reasons other than the failure of the court to provide counsel for an indigent defendant or the insistence of the defendant on proceeding without counsel.
- (h) Other period of delay occasioned by exceptional circumstances.

6. Retrials.

Where a new trial has been ordered by the district court or a trial or new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless extended for good cause.

7. Demand and Waiver Provisions.

A demand by a defendant is not necessary for the purpose of invoking the rights conferred by these rules. However, failure of a defendant to move for discharge prior to plea of guilty or trial shall constitute waiver

of such rights. The preceding sentence shall not apply to a defendant without counsel unless he has notice of these rules.

- 8. Procedures Intended to Facilitate Prompt Disposition of Cases.
 - (a) Pre-trial conferences pursuant to Rule 17.1, Federal Rules of Criminal Procedure, shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.
 - (b) The court or magistrate at the time of arraignment or at the time of any proceeding preliminary to arraignment shall promptly appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure. If a defendant appears for arraignment without counsel his arraignment may be postponed not more than one week, except for good cause shown, to permit him to obtain or to consult with counsel. When appropriate the court may cause a plea of not guilty to be entered for the defendant. The court shall take adequate steps to ensure that defendants are represented by counsel.
 - (c) A trial date shall be set at the time of pre-trial conference or at the earliest practicable time thereafter.
 - (d) If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.
 - (e) A defendant shall ordinarily be sentenced within 45 days of the date of his conviction or plea of

guilty or nolo contendere. This specific period, however, may be varied in accordance with the pre-sentence report practices and procedures in this district.

- Responsibility of United States Attorney and Defense Counsel.
 - (a) The court has sole responsibility for setting and calling cases for trial. Neither a conflict in schedules of Assistant United States Attorneys nor a conflict in schedules of defense counsel will be ground for a continuance or delayed setting except under unusual circumstances approved by the court and called to the court's attention at the earliest practicable time. Each judge will schedule criminal trials at such times as may be necessary to assure prompt disposition of criminal cases. The United States Attorney will familiarize himself with scheduling procedures of each judge and will assign or reassign cases in such manner that the government will be able to announce ready for trial.
 - (b) If the United States Attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a federal, state, or other institution or that of another jurisdiction, it is his duty promptly:
 - (i) to undertake to obtain the presence of the prisoner for plea and trial; or
 - (ii) when the government is unable to obtain the presence of the defendant, to cause a detainer to be filed with the official having custody of the prisoner and request him to advise the

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO DITAISS w/ Appendices attached.

prisoner of the detainer and to inform the prisoner of his rights under the Federal Rules of Criminal Procedure and this plan.

10. Effective Date of Plan.

This plan shall become effective upon approval of the reviewing panel designated in accordance with Rule 50(b) Federal Rules of Criminal Procedure.

HIPENDIX 1)

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U.S. LISTINGY COURT NEW NAVELL COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

CRIMINAL NO. N 75-59

MICHAEL J. TICHE

RESPONSE TO DEFENDANT'S MOTION FOR CHANGE OF VENUE

The United States Attorney, through the undersigned Assistant United States Attorney, does not object to transferring this matter to the United States District Court of another district. The Government does not agree, however, to the specific locations named in the defendant's motion. The Government is prepared to submit appropriate alternative locations within this circuit equally convenient to the parties and witnesses and unexposed to substantial publicity about this matter.

The Government has filed a Notice of Readiness in this case and is ready for trial. Since a change of venue may require the appointment of separate counsel and an additional period for trial preparation, the retrial may not be begun within the required sixty-day period. The Government requests, therefore, that the Court advise the defendant of this possibility and obtain from an a waiver of the right to re-trial within sixty days.

Respectfully submitted,

Reter C. Dorsey United States Attorney

Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the within and foregoing Response to Defendant's Motion for Change of Venue was forwarded this 26th day of March, 1976, to: Thomas D. Clifford, Esquire, 799 Main Street, Hartford, Connecticut.

Assistant United States Attorney

MEAD, BEGLEY & QUINLAN
ATTORNEYS AT LAW
133 WALL STREET
SCHENECTADY, N.Y. 12305
(516) 346-1221-374-6317

KELSIE E. MEAD &
OWEN M. BEGLEY
WILLIAM J. QUINLAN

(1891-1969)

May 19, 1976

Honorable Henry F. Werker United States District Judge United States Court House Foley Square New York, New York 10007

Re: United States v. Michael J. Tiche

Dear Judge Werker:

Mr. William F. Dow, III, the Assistant U.S. Attorney for the District of Connecticut in charge of the above case, advised me by telephone Tuesday afternoon that the District of Connecticut "Plan for Achieving Prompt Disposition of Criminal Cases" that he had annexed to his opposing papers to my Motion to Dismiss was not in effect in the District of Connecticut on February 11, 1976. Mr. Dow said that he had mistakenly believed that Plan to be in effect, but that upon checking he learned that the "Interim Plan" in effect in the District of Connecticut was identical in language as to "Retrials" to that in the Northern District of New York and provides that:

"Where a new trial has been ordered by the District Court or a trial or new trial has been ordered by an Appellate Court, it shall commence at the earliest practicable time, but in any event, not later than 60 days after the finality of such order..."

Mr. Dow said that he had informed your law clerk of this quite significant fact also on Tuesday afternoon. I spoke with your law clerk this morning (Wednesday) and she stated I could send a letter setting forth my comments.

MEAD, BEGLEY & QUINLAN ATTORNEYS AT LAW

Honorable Henry F. Werker Page Two

May 19, 1976

Re: United States v. Michael J. Tiche

As already noted in defendant's moving papers, Rule 50(b) of the Federal Rules of Criminal Procedure authorized and directed each District Court to enact plans containing rules for the prompt disposition of criminal cases. The Interim Plan of the Northern District flatly directs that a Retrial "in any event" occur no later than 60 days after an order by the District Court. No exceptions whatever are allowed, except in situations involving appeals or collateral attacks, which are not present here.

The core of the Government's opposition to defendant's Motion was that while the Northern District Plan had such a mandatory direction, the Connecticut Plan did not and indeed provided for Retrials within 90 days or longer if "good cause" was shown.

With the Government's belated discovery that the Connecticut Plan so providing was not in effect and had been replaced by a Plan identical in directory language to that of the Northern District of New York, the factual basis for its opposition to dismissal collapses. Whether one views the time clock from Hartford, Connecticut or Albany, New York, it began to run on the same date, February 11, 1976, and stopped running 60 days thereafter. The flat sixty-day requirement was binding on the District Court of Connecticut prior to the transfer and on the Northern District of New York when the case arrived there. Thus at all times, both Courts were obligated by the sixty-day rule.

Supporting this rather obvious result is the language of the Government's Response to defendant's Motion for change of venue in Connecticut, submitted March 26, 1976. In that Response the Government stated it was ready for trial, acknowleged that retrial should begin within the "required sixty-day period" and acknowledged defendant's "right to retrial within 60 days".

MEAD, BEGLEY & QUINLAN ATTORNEYS AT LAW

Honorable Henry F. Werker Page Three

May 19, 1976

Re: United States v. Michael J. Tiche

A copy of the Government's Response is annexed to this letter and the pertinent paragraph reads as follows:

"The Government has filed a Notice of Readiness in this case and is ready for trial. Since a change of venue may require the appointment of separate counsel and an additional period for trial preparation, the retrial may not be begun within the required sixty-day period. The Government requests, therefore, that the Court advise the defendant of the possibility and obtain from him a waiter of the right to re-trial within sixty day...

The transcript of the oral argument in Connecticut on defendant's Motion for a change of venue (which is annexed to the Government's answering papers on defendant's Motion to Dismiss in the Northern District of New York) also reveals at pages 3 and 4 that defendant's counsel there advised the Court that the Government had asked for "some sort of a waiver of a speedy trial" and defense counsel then stated "I am not about to waive that on behalf of my client".

The District Court in Connecticut, of course, was chargeable with knowledge of that District's Interim Plan requiring retrial within 60 days and indeed the Government's papers specifically alluded to the requirement of a sixty-day retrial and defendant's "right" to it.

As noted during the oral argument in Albany, the wisdom of such a requirement may be subject to academic debate but its validity is not. It is now acknowledged that the flat mandate of a retrial within 60 days here with no ifs, ands or buts was and is contained in the rules embodied in the Interim Plans both of the District of Connecticut and of the Northern District of New York. It is submitted that there should be no question that since the 60 days have clapsed, those rules have not been complied with and the indictment should be dismissed for that reason.

MEAD, BEGLEY & QUINLAN ATTORNEYS AT LAW

Honorable Henry F. Werker Page Four

May 19, 1976

Re: United States v. Michael J. Tiche

The situation here is quite similar to that before the Ninth Circuit Court of Appeals in <u>United States v. Timesco</u>, decided March 25, 1976, No. 76-1571. As a member of the Speedy Trial "Planning Group" for the Northern District of New York, I received a Release from the Administrative Office of the United States Courts setting forth the full text of the Ninth Circuit's opinion and I am enclosing a copy of that Release with this letter.

In the Tirasso case, the Court was confronted with the clear and unambiguous language of the Speedy Trial statute which required the release from confinement of defendants if they had not been brought to trial within 90 days of their incarceration. The Court acknowledged the good faith of the Government in that case, and further found that there were ample reasons for the delay, including the transfer from one district to another. The Court also acknowledged that if the statute was complied with, the result would be, without question, that the defendants would fice to Mexico. Despite all these factors the Ninth Circuit held it had no alternative but to comply with the mandatory direction of the statute, and released the defendants. While the Court in the Tirasso case was dealing with the requirements of a statute, and this Court is dealing with the requirements of an Interim Plan, the result cannot be different. The Interim Plan was duly issued pursuant to a Rule of Federal Criminal Procedure (Rule 50(b)) and was reviewed by the Judicial Council of the Second Circuit. Its validity and impact is just as binding upon the District Courts as any statute. Otherwise, if the directives of the Plan could be disregarded, the enactment of the Plan would be an exercise in futility.

The parallels between the <u>Tirasso</u> case and the case here at issue are striking. In <u>Tirasso</u> the Court noted:

"Appellants do not dispute the reasonableness of the procedures, the fact that the delay was occasioned by a lengthy investigation of a serious and massive criminal scheme,

MEAD, BEGLEY & QUINLAN ATTORNEYS AT LAW

Honorable Henry F. Werker Page Five

Lay 19, 1976

Re: United States v. Michael J. Tiche

the good faith of the government, or the high probability that defendants will flee to a foreign country. But they argue that such considerations are irrelevant. They point out that the statute unconditionally mandates release from custody in all cases where the defendants have not been brought to trial within ninety days of arrest.

18 U.S.C. § 3164(c).* (p. 2)

Despite this the Court stated:

"In light of these facts, the wisdom of the result Congress has decreed its questionable..." (p. 4)

"It is discouraging that our highly refined and complex system of criminal justice is suddenly faced with implementing a statute that is so inartfully drawn as this one. But this is the law, and we are bound to give it effect."

(p. 4)

It has already been brought to this Court's attention that the language of the Interim Plan now concededly in effect both in Connecticut and the Northern District of New York, allows for time extensions in retrial situations in the event of appeal or collateral attack but not otherwise. This is similar to the statutory plan in the Speedy Trial Act which provides "excludable time" in almost all situations except that which requires the release of a defendant whose trial does not begin within 90 days of his incarceration. Here again the language of the Ninth Circuit is squarely in point:

"Our analysis is confined to 9 3164, which pertains to all defendants in pretrial custody during the interim period from September 29, 1975, through June 30, 1979.

MEAD, BEGLEY & QUINLAN ATTORNEYS AT LAW

Honorable Henry F. Werker Page Six

May 19, 1976

Re: United States v. Michael J. Tiche

We note, by way of contrast, that the statute provides an elaborate series of exceptions or exclusions applicable to the permanent and transitional periods. 18 U.S.C. § 3161(h). The fact that such exceptions or exclusions were explicitly provided in one portion of the statute but not in the other may have been the product of a drafting error, or perhaps was caused by a misunderstanding of the practical requirements of criminal administration. In any event, the contrast in the statute requires us to find that the clearly expressed congressional intent is to provide no periods of exclusion for the ninety-day trial requirement applicable during the interim period." (p. 3)

The result here is clear. The language of the Interim Plan requiring a retrial to commence "in any event ... no later than 60 days" is clear and unambiguous. It may or may not have been a result of a drafting error, but that is irrelevant. The jury disagreement in Connecticut occurred on February 11, 1976. The Government, on that date, said it was ready for trial and the Government later acknowledged defendant "right" to a retrial within the sixty-day period. The defendant here did not receive that right and it is respectfully submitted that the indictment against him should be dismissed.

Fortunately, the result here is not so drastic that in the <u>Tiraggo</u> case, where dangerous drug dealers we released to continue their business. If the indictment here is dismissed, defendant Michael J. Tiche is still subject to a pending State of Connecticut indictment against him. In any event, if the Interim Plans of Connecticut and the Northern District of New York are to be any more than pieces of paper,

MEAD, BEGLEY & QUINLAN ATTORNEYS AT LAW

Honorable Henry F. Werker Page Seven

May 19, 1976

Re: United States v. Michael J. Tiche

their flat unambiguous requirement of a speedy retrial within 60 days must be adhered to and the indictment against Tiche dismissed.

I am sending a copy of this letter to Mr. Dow.

Sincerely,

Will J. Gimlen

William J. Quinlan

WJQ:aa Enclosures

cc: Mr. William F. Dow, III
Assistant U.S. Attorney

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS SUPREME COURT BUILDING

WASHINGTON, D.C. 20544

ROWLAND F. KIRKS DIRECTOR WILLIAM E. FOLEY

March 30, 1976 Issuance #12

TO:

All Federal Judges, Planning Group Members, and Circuit Executives

Speedy Trial Advisory

SUBJECT:

DECISION IN UNITED STATES v. TIRASSO, INTERPRETING "INTERIM" TIME LIMITS UNDER 18 U.S.C. § 3164

In an opinion written by Judge Kennedy, the Court of Appeals for the Ninth Circuit has held that the exclusions of 18 U.S.C. §3161(h) do not apply to computations under the 90-day "interim" time limit. The case is <u>United States</u> v. <u>Tirasso</u>, No. 76-1571, March 25, 1976. The other members of the panel were Judges Goodwin and Sneed.

The text of the opinion follows:

Appellants Tito Lombana-Pineres and Pietro Tirasso were indicted in the Southern District of New York on charges stemming from an alleged attempt to smuggle 20 kilograms of cocaine into the United States from Colombia. They were arrested on November 19, 1975. Subsequently a criminal complaint was issued in the District of Arizona and the New York indictment was dismissed. On January 5, 1976, a magistrate ordered the appellants' removal to the District of Arizona, where they were indicted on January 20, 1976. A superseding indictment was issued February 18, 1976, and trial was set for April 13, 1976.

Since their arrest, appellants have remained in continuous custody in lieu of \$100,000 bail. Appellants' motion for release from custody on their own recognizance was denied by the district court. They appeal, arguing that the Speedy Trial Act of 1974, 18 U.S.C. § 3164, mandates their release because they have been in continuous custody for more than ninety days awaiting trial.

Appellants do not charge the government with bad faith in causing their removal to Arizona or in failing to bring them to trial immediately. The delays were necessary to gather evidence of a criminal conspiracy whose dimensions grew as the investigation proceeded, and which eventually proved to be of massive proportions.

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The New York arrest and indictment charged appellants only with conspiracy to undertake a single transaction involving three defendants, but the subsequent Arizona indictments alleged that appellants engaged in a series of criminal transactions involving twenty—two defendants, in ten separate states, the Commonwealth of Puerto Rico, and four foreign countries. Arrest of the appellants prior to the conclusion of the investigation was necessary because they were foreign nationals, who had arrived only recently from abroad and were likely to leave the country at any time. While appellants could have been tried immediately for a portion of the conspiracy in the Southern District of New York, it was reasonable to remove them to Arizona, the hub of this far-flung conspiracy. Indeed, removal of such a case is required for the sound administration of criminal justice; the action conserved judicial resources and the resources of the defendants.

Appellants do not dispute the reasonableness of the procedures, the fact that the delay was occasioned by a lengthy investigation of a serious and massive criminal scheme, the good faith of the government, or the high probability that defendants will flee to a foreign country. But they argue that such considerations are irrelevant. They point out that the statute unconditionally mandates release from custody in all cases where the defendants have not been brought to trial within ninety days of arrest. 18 U.S.C. § 3164(c).

We are constrained to agree. The language of section 3164 is straightforward. We find no ambiguity in its interpretation. Subsection (b) provides that the trial of persons held in custody solely because they are awaiting trial must commence within ninety days following the beginning of such continuous detention. Subsection (c) provides that the failure to commence trial within the ninety day period, where such failure is not occasioned by the fault of the accused or his counsel, must result in an automatic review by the court of the conditions of release, and further that "no detainess . . . shall be held in custody pending trial after the expiration of such ninety-day period . . . " Under the clear language of the statute the reason for delay is irrelevant, so long as it is not occasioned by the accused or his counsel.

The legislative history, moreover, makes it clear that release of the defendant from custody, and nothing less, is the sanction for delay beyond the ninety-day period. "Failure to commence the trial of a detained person under this section results in the automatic review of the term of release by the court and, in the case of a person already under detention, release from custody." S. Rep. No. 1021, 93d Cong., 2d Sess., reproduced in, 4 U.S. Code Cong. & Ad. News 7401, 7416 (1974) (emphasis added).

The government contended below that the ninety-day period has not expired, since appellants have been in custody in the District of Arizona only since January 5, 1976. Appellants, however, contend that they have been in continuous custody for the same offense since November 19, 1975, and the fact that a portion of the detention occurred in the Southern District of New York is of no consequence.

Section 3164 does not speak of detention within a particular district. Nor does it provide any period of exclusion for delay occasioned by the special circumstances of difficult cases.[1] The statute simply provides that "the trial of any person [detained solely because they are awaiting trial] shall commence no later than ninety days following the beginning of such continuous detention." While the offense charged in the Arizona indictment is of a substantially larger scope than that charged in the New York indictment, they are both based on many of the same operative facts, and they are not, therefore, completely discrete offenses for which separate ninety-day periods might be applicable. Since appellants have been in custody for over ninety days awaiting trial on these charges, we hold that the clear and unambiguous terms of the Speedy Trial Act mandate their release pending trial.

We are fully aware of the dangers inherent in today's decision. The charges against these defendants are serious. We are not dealing with a haphazard attempt by amateurs to run the border with a small quantity of controlled substance, but rather with a sophisticated enterprise for importing wholesale quantities of dangerous drugs into the United States. The value of the 20 kilogram shipment alleged in the New York indictment was estimated between \$500,000 and \$600,000. The government's case, as now pleaded, alleges a series of six such transactions involving these two appellants. Appellant Tito Lombana has been identified as "the head of a huge organization responsible for sending large quantities of cocaine into the United States." Appellant Tirasso is identified as Lombano's liaison in the United States and as a direct participant in at least one previous transaction involving 5 kilograms of cocaine. Under these allegations the United States has the greatest interest in bringing these individuals to justice.

⁽¹⁾ Our analysis is confined to § 3164, which pertains to all defendants in pretrial custody during the interim period from September 29, 1975, through June 30, 1979. We note, by way of contrast, that the statute provides an elaborate series of exceptions or exclusions applicable to the permanent and transitional periods. 18 U.S.C. § 3161(h). The fact that such exceptions or exclusions were explicitly provided in one portion of the statute but not in the other may have been the product of a drafting error, or perhaps was caused by a misunderstanding of the practical requirements of criminal a ministration. In any event, the contrast in the statute requires us to find that the clearly expressed congressional intent is to provide no periods of exclusion for the ninety-day trial requirement applicable during the interim period.

Release of these two foreign nationals from custody is tantamount to an invitation to flee across the Mexican border, less than 3 hours away. The district court, is denying appellants' motion for release, noted that there was virtually no way to assure the appearance for trial of a foreign national once he is set free in the District of Arizona. Defense counsel all but admitted that appellants, once released, could not be counted upon to appear. We have no doubt of the correctness of this proposition.

In light of these facts, the wisdom of the result Congress has decreed is questionable. We release a man alleged to be the head of a foreign criminal organization dedicated to the smuggling of large quantities of illegal drugs, so that he may quickly cross the border and resume operating his business. We are also releasing his alleged right-hand man, as if to make certain that the enterprise continues to operate at top efficiency. But this result is the only one open to us under the plain terms of the statute.

It is discouraging that our highly refined and complex system of criminal justice is suddenly faced with implementing a statute that is so inartfully drawn as this one. But this is the law, and we are bound to give it effect.

It is therefore ordered that the district court release the appellants within 48 hours of the filing of this opinion upon such terms and conditions as the court may deem reasonable and not inconsistent with the views expressed herein.

The mandate will issue now.

Remanded.

Deputy Director

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U. S. PISTRICY COURT NEW HAVEN. COUR.

nee. D

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

CRIMINAL NO. N 75-59

MICHAEL J. TICHE

RESPONSE TO DEFENDANT'S MOTION FOR CHANGE OF VENUE

The United States Attorney, through the undersigned Assistant United States Attorney, does not object to transferring this matter to the United States District Court of another district. The Government does not agree, however, to the specific locations named in the defendant's motion. The Government is prepared to submit appropriate alternative locations within this circuit equally convenient to the parties and witnesses and unexposed to substantial publicity about this matter.

The Government has filed a Notice of Readiness in this case and is ready for trial. Since a change of venue may require the appointment of separate counsel and an additional period for trial preparation, the retrial may not be begun within the required sixty period. The Government requests, therefore, that the Court advise the defendant of this possibility and obtain from him a waiver of the right to re-trial within sixty days.

Respectfully submitted,

Reter C. Dorsey

hijed States Attorney

William F. Dow, III
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the within and foregoing Response to Defendant's Motion for Change of Venue was forwarded this 26th day of March, 1976, to: Thomas D. Clifford, Esquire, 790 Main Street, Hartford, Connecticut.

Assistant United States Attorney

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

: 76 - CR - 44

MICHAEL J. TICHE

SUPPLEMENTAL RESPONSE TO DEFENDANT'S MOTION TO DISMISS

In September, 1975, in accordance with the requirements of Section 3164 of the Speedy Trial Act (18 U.S.C. 3164), the District Courts of the Northern District of New York and the District of Connecticut implemented an "Interim Plan" to assure the proper priority in the trial or disposition of criminal cases within those districts. (Copy of Connecticut Interim Plan attached as Appendix A). These plans are essentially identical and the provisions for "Retrials" (Rules 6 of both Plans) and sanctions for non-compliance (Rules 4 and Rules 5) are virtually identical. Both Plans are presently in effect and will remain so until superceded by the revised plans which become operative on July 1, 1976.

Defendant Tiche maintains that this case, despite the Motion to Withdraw by his original counsel, his Motion for Change of Venue, and appointment of new counsel, should be dismissed, with prejudice, for failure to comply with Rule 7 of the Interim Plan of the Northern District which requires that a "new trial ... commence ... not later than 60 days" from the finality of the order for new trial. The Government submits that Defendant's Motion should be denied.

First, dealing with the plan on its own terms, there are no sanctions provided for non-compliance with Rule 7. The non-compliance Rules, 4 and 5, deal with the Government's obligation to be ready for trial within six months "from the date of arrest, service of summons, detention, or the filing of a complaint or

periods, 18 U.S.C. 3161(h), including delays resulting from transfer from other districts under the Federal Rules of Criminal Procedure. When read against this backdrop, the cracks in the Interim Plan are filled; both sanctions for non-compliance and excludable periods apply to retrials. The Revised 50(b) Plan of the District of Connecticut, (copy attached as Appendix B), essentially identical to the Northern District plan, as opposed to the Interim Plans, conforms similarly to this aspect of the Act. Additionally, even under the sanctions provided in the Act, dismissal with prejudice is not required for the Court must consider

the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of [the Speedy Trial Act] - on the administration of justice [among other factors]

18 U.S.C. 3162(a)(2)

Ultimately one must reason with logic in assessing the issue presented. Should the defendant be rewarded with dismissal of his case because his original attorney was allowed to withdraw, his case transferred to another district and a new attorney appointed? Had the trial been scheduled before new counsel had an adequate opportunity to prepare this case could the defendant have been forced to trial? The realities of the complexities of this case and the logistics involved in its transfer to the Northern District of New York cannot be disregarded, nor can a rule be invoked

Retrials, in the Revised plan, are treated under Rule 5, Time within which trial must commence, (Connecticut Revised 50(b) Plan, Appendix B), and not separately under a separate rule, in accordance with the Act. The Interim Plans, rather than narrowing the Act as Defendant suggests, in fact violate it by failing to adequately provide for sanctions for delays incurred in retrials.

of a formal charge on which the defendant is to be tried" (ule 5) or the failure to hold trial for detained defendants within prescribed periods (Rule 4). Thus, to read Rule 7 as defendant suggests renders it unenforceable.

Assuming arguendo that Rule 5 might be read to apply here (though to do so requires substantial mental prestidigitation), dismissal, especially with prejudice, is inappropriate. The Government was, in fact, ready for trial within six months of the return of the original indi. on May 8, 1975, and in fact trial did commence well within that period. Moreover, the Government was---- ready to retry Michael Tiche since the date of declaration of mistrial on February 11, 1976. Thus, the predicate for i vocation of Rule 5 sanctions has not been established. However, even further assuming Government unpreparedness, the relief requested --- dismissal with prejudice --- is stil' not mandated, for this case certainly presents the "exceptional circumstances envisioned by Rule 6(h) and as well as an excludable period of 40 days (February 19 to March 31) while the Motion to Withdraw ("proceedings concerning the defendant") was pending Rule 6(a). And even if that period is not properly excludable and if the Court found neglect by the Government, still the proper remedy would be to allow the Government to proceed with trial within ten days.

The long and the short of the matter is that the Interim Plans do not adequately deal with retrials following mistrials, especially where there has been a change of venue. This problem has simply fallen between the cracks. Guidance, there, must be sought from the Speedy Trial Act itself and from the Revised Plans which will become effective on July 1, 1976. Section 3161(e) provides new trials following mistrials must commence within 60 days. However, the Act also provides that calculation of this time period (as with all trials) is subject to certain excludable

to create a remedy which does not exist. A dismissal of the charges against Muchael Tiche would defy commonsense and would violate, the Government submits, both the latter and purpose of the Interim Plan, and more importantly, the Speedy Trial Act.

Respectfully submitted,

WILLIAM F. DOW, III ASSISTANT UNITED STATES ATTORNEY

CERTIFICATE OF SERVICE

This is to certify that a copy of the within and foregoing Supplemental kesponse to Defendant's Motion To Dismiss was mailed this 19th day of May, 1976 to:

William Quinlan, Esquire Mead, Begley & Quinlan 133 Wall Street Schnectady, New York

WILLIAM F. DOW, III
ASSISTANT UNITED STATES ATTORNEY

FILED

UNITED STAT'S DISTRICT COURTS 2 37 FH '75

AMENDMENTS TO CONFORM RULE 50(b)
PLAN TO IN ERIM REQUIREMENTS OF
THE SPEEDY TRIAL ACT

Pursuant to the requirement of Rule 50(b) of the Federal Rules of Criminal Procedure effective October 1, 1972, and in conformity with the provisions of the Speedy Trial Act of 1974 (Chapter 208, Title 18 U.S.C.), and the Federal Juvenile Delinquency Act as amended (18 U.S.C. §§ 5035, 5037) the Judges of the United States District Court for the District of Connecticut have adopted the following plan to minimize undue delay and to further the prompt disposition of criminal cases:

1. Priorities in Scheduling Criminal Cases:

Insofar as is practicable:

- (a) the trial of criminal cases shall be given preference over civil cases, as provided by Rule 50(a) Federal Rules of Criminal Procedure; and
- (b) the trial of defendants in custody and high risk defendants should be given preference over other criminal cases. As used in this plan, "custody" means custody on the Federal charge contained in the pertinent complaint, information, or indictment. As used in this plan, a "high risk defendant" means a defendant not in custody
 - (i) whose chances of appearing at his trial or other court proceedings have been judicially determined to be poor; or,
 - (ii) reasonably designated by the United States Attorney as posing a danger to himself or any other person, or to the community.

- Review of Defendants in Custody and Delinquent Cases.
 - (a) The United States Attorney of this District shall submit to the Chief Judge of the Circuit and the Chief Judge of the District Court reports of defendants in custody, high risk defendants, and delinquent cases as prescribed by the Circuit Executive, with approproval of the Chief Judge of the Circuit. Copies shall be furnished each District Court Judge and the fircuit Executive. In addition to monthly/reports (Form 74 and 74A), these reports shall include a biweekly report on revised Form 73 of all persons in custody awaiting action in this District, including juveniles, and all high risk defendants, which shall set forth the date on which the time for trial of each defendant begins to run and which shall report any action taken during the reporting period pursuant to paragraph 4 or 11 for non-compliance with the time requirements for commencing trial.
 - (b) At not more than six-month intervals, the judges of the court, or a committee thereof, shall review the status of all persons in custody and all cases in which the maximum time limits set forth in Rules 3 and 5 have been exceeded. Cases shall be reassigned as appropriate in order to carry out the purposes of this plan. The United States Attorney shall be informed of any cases in which his office appears to be responsible for unnecessary delay.
- Time Requirement for Trial of Defendants in Custody and of High Risk Defendants.
 - (a) (1) Trial of a defendant held in custody solely for the purpose of trial shall commence within 90 days following the beginning of continous custody.
 - (2) Trial of a high risk defendant shall commence within ninety days of the determination or designation as "high risk," or within ninety days of the effective date of this plan, whichever is later.

- (b) (1) Where a defendant is apprehended outside this District and held in custody and his case is initially processed under Rule 20 of the Federal Rules of Criminal Procedure, the times set out above shall begin to run where the defendant rejects disposition under Rule 20.
 - (2) Where a defendant is apprehended outside this District and is held in custody (except for cases initially processed under Rule 20), the times set out above shall begin to run:
 - (i) Upon the beginning of the defendant's continuous custody, if the arrest was pursuant to a warrant issued on an indictment or information filed in this District;
 - (ii) Upon the finding and recommendation or order by a magistrate that a warrant of removal shall issue, if the defendant's arrest was not pursuant to such a warrant.
 - (3) Where a defendant is apprehended outside this District and is released pursuant to the provisions of Chapter 207, Title 18, U.S.C., the times set out above shall begin to run when the defendant returns to his district.

4. Effect of Noncompliance.

Upon the expiration of the time limits prescribed by section 3:

- (1) A defendant in custody solely because he is awaiting trial and whose trial has failed to commence through no fault of the accused or his attorney shall be released subject to such conditions as the court may impose in accordance with 18 U.S.C. § 3146.
- (b) A high risk defendant whose trial has failed to commence through no fault of the attorney for the Government shall have his release conditions automatically reviewed by the court.

A high risk defendant who is found by the court at that time to have intentionally delayed the trial of his case shall be subject to an order of this court modifying his non-financial conditions of release under Chapter 207, Title 18, U.S.C., to insure that he shall appear at trial as required.

All Cases: Trial Readiness and Effect of Non-Compliance:

In all cases the Government must be ready for trial within six months from the date of the arrest, service of summons, detention, or the filing of a complaint or of a formal charge upon which the defendant is to be tried (other than a sealed indictment), whichever is the earliest. If the Government is not ready for trial within such time, and if the defendant is charged only with non-capital offenses, the defendant may move in writing, on at least ten days' notice to the Government, for dismissal of the indictment. Any such motion shall be decided with utmost promptness. If it should appear that sufficient grounds existed for tolling any portion of the six-months period under one or more of the exceptions in Rule 6, the motion shall be denied. whether or not the Government has previously requested a continuance. Otherwise the court shall enter an order dismissing the indictment with prejudice unless the court finds that the Government's neglect is excusable, in which event the dismissal shall not be effective if the Government is ready to proceed to trial within ten days.

Excluded Periods.

In computing the time within which the Government should be ready for trial under Rule 5, the following periods should be excluded:

(a) The period of delay while proceedings concerning the defendant are pending, including but not limited to, proceedings for the determination of competency and the period during which he is incompetent to stand trial, pre-trial motions, interlocutory appeals, trial of other charges, and the period during which such matters are sub judice.

- GOVERNMENT'S SUPPLEMENTAL RESPONSE TO DE-FENDANT'S MOTION TO DISMISS w/ Appendices attached.
- (b) Periods of delay resulting from a continuance granted by the district court at the request of, or with the consent of, the defendant or his counsel, in writing or stated upon the record. The district court shall grant such a continuance only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges. A defendant without counsel should not be deemed to have consented to a continuance unless he has been advised by the court of his rights under these rules and the effect of his consent.
- (c) The period of time during which:
 - (i) evidence material to the Government's case is unavailable, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period; or
 - (ii) the prosecuting attorney is actively preparing the Government's case for trial and additional time is justified by exceptional circumstances of the case.
- (d) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever his location is unknown. A defendant should be considered unavailable whenever his location is known but his presence of trial cannot be obtained by due diligence.
- (e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case.
- (f) The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial.

- (g) The period during which the defendant is without counsel for reasons other than the failure of the court to provide counsel for an indigent defendant or the insistence of the defendant on proceeding without counsel.
- (h) Other period of delay occasioned by exceptional circumstances.

7. Retrials.

Where a new trial has been ordered by the District Court or a trial or new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event, not later than 60 days after the finality of such order. If the defendant is to be retried following an appeal or collateral attack, the court trying the case may extend such period for a total not to exceed 180 days from the date on which the order occasioning the retrial becomes final, where unavailability of witnesses or other factors resulting from passage of time shall make trial within 60 days impractical.

8. Demand and Waiver Provisions.

A demand by a defendant is not necessary for the purpose of invoking the rights conferred by these rules. However, failure of a defendant to move for discharge prior to plea of guilty or trial shall constitute waiver of such rights. The preceding sentence shall not apply to a defendant without counsel unless he has notice of these rules.

Procedures Intended to Facilitate Prompt Disposition of Cases.

(a) Pre-trial conferences pursuant to Rule 17.1, Federal Rules of Criminal Procedure, shall be conducted as soon /afthe arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.

- (b) The court or magistrate at the time of arraignment or at the time of any proceeding preliminary to arraignment shall promptly appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure. If a defendant appears for arraignment without counsel his arraignment may be postponed not more than one week, except for good cause shown, to permit him to obtain or to consult with counsel. When appropriate the court may cause a plea of not guilty to be entered for the defendant. The court shall take adequate steps to ensure that defendants are represented by counsel.
- (c) A trial date shall be set at the time of pretrial conference or at the earliest practicable time thereafter.
- (d) If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.
- (e) A defendant shall ordinarily be sentenced within 45 days of the date of his conviction or plea of guilty or nolo contendere. This specific period, however, may be varied in accordance with the presentence report practices and procedures in this district.

10. Responsibility of United States Attorney and Defense Counsel.

(a) The court has sole responsibility for setting and calling cases for trial. Neither a conflict in schedules of Assistant United States Attorneys nor a conflict in schedules of defense counsel will be ground for a continuance or delayed setting except under unusual circumstances approved by the court and called to the court's attention at the earliest practicable time. Each judge will schedule criminal trials at such times as may be necessary to assure prompt disposition of criminal cases. The United States Attorney will familiarize himself with scheduling procedures of each judge and will assign or reassign cases in such manner that the Government will be able to announce ready for trial.

- (b) If the United States Attorney knowns that a person charged with a criminal offense is serving a term of imprisonment in a federal, state, or other institution or that of another jurisdiction, it is his duty promptly:
 - (i) to undertake to obtain the presence of the prisoner for plea and trial; or
 - (ii) when the Government is unable to obtain the presence of the defendant, to cause a detainer to be filed with the official having custody of the prisoner and request him to advise the prisoner of the detainer and to inform the prisoner of his rights under the Federal Rules of Criminal Procedure and this plan.
- (c) If a defendant is being held in custody awaiting trial, the United States Attorney shall be responsible for advising the curt at the earliest practicable time of the date of the beginning of custody.
- (d) It is the responsibility of the United States Attorney to advise the court at the earliest practicable time (usually at the hearing with respect to bail) that the defendant is considered a high risk defendant.

11. Juvenile Proceedings.

(a) An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date upon which such detention was begun.

Upon the expiration of such time limit, on the motion of the alleged delinquent or at the direction of the court, the case shall be dismissed, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel or was consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Except in extraordinary circumstances, an information dismissed under this provision may not be reinstituted.

(b) If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

12. Effective Date of Plan.

This plan shall become effective on September 29, 1975.

Chief United States District Judge

United States District Judge

United States District Judge

United States District Judge

III. Statement of time limits adopted by the court and procedures for implementing them

DISTRICT OF CONNECTICUT

REVISED RULE 50 (b), PLAN, EFFECTIVE JULY 1, 1976.

Pursuant to the requirements of rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. chapter 208), and the Federal Juvenile Delinquency Act 18 U.S.C. §§5036, 5037), the judges of the United States District Court for the District of Connecticut have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings.

Throughout this Revised Rule 50(b) Plan [hereinafter Plan], the District of Connecticut has decided to adopt, effective July 1, 1976, the statutory time limits for July 1, 1979, mandated by the Speedy Trial Act of 1974. By accelerating the effective date of the 1979 time limits, it is hoped that problems in compliance will be identified and solved before sanctions are applicable. While we are adopting the 1979 time limits effective July 1, 1976, none of the sanctions encompassed in 18 U.S.C. §§3162 will become effective until July 1, 1979, the deadline mandated by Congress.

Immediate application of the stringent 1979 time limits without sanctions will allow the planning group to monitor more accurately potential difficulties in complying with the Speedy Trial Act by focusing upon the district's long-range problems now. It is hoped that the changes in the district's arraignment procedures established in Sec. 4 of this Plan will render the 60-day limit from arraignment to trial our only significant remaining compliance problem. Adopting the 1979 time

limits immediately also will aid in assessing the effectiveness of changes made in this district's pretrial discovery motions and trial scheduling practices as established in Section 5 of this Plan.

- 1. Applicability.
- (a) Offenses. The time limits set forth herein are plicable to all criminal offenses triable in this court, including cases triable by United States magistrates, except for petty offenses as defined in 18 U.S.C. §1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act.
- (b) Persons. The time limits are applicable to persons accused by complaint who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.
 - 2. Priorities in Scheduling Criminal Cases.
- (a) Preference shall be given to criminal proceedings as far as practicable as required by rule 50(a) of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial should be given preference over other criminal cases.
- (b) The preference to be given criminal cases shall not be unduly prejudicial to the prompt disposition of civil litigation.
 - 3. Time Within Which an Indictment or Information Must be Filed.
- (a) <u>Time Limits</u>. Any information or indictment charging an individual with the commission of an offense shall be filed within 30 days from the date on which such individual was arrested or served with a summons in connection with such charges.
 - (b) Measurement of Time Periods. If a person has not been

arrested or served with a summons on a Federal charge, an arrest will be deemed to have been made at such time as the person (i) is held in custody solely for the purpose of responding to a Federal charge; (ii) is delivered to the custody of a Federal official in connection with a Federal charge; or (iii) appears before a judicial officer in connection with a Federal charge.

- (c) Related Procedures.
- (1) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment of information, the judicial officer shall establish for the record the date on which the arrest took place.
- (2) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.
 - 4. Time Within Which Arraignment Must be Held.
- (a) An arraignment shall be considered to take place at the time a plea is taken or entered in open court on the defendant's behalf. The fulltime magistrates are authorized to conduct arraignments and to enter pleas of not guilty in all criminal cases. A defendant wishing to plead guilty or nolo contendere shall be referred promptly to the trial judge.
- (b) <u>Time Limits</u>. A defendant shall be arraigned within 10 days of:
 - 1) The filing of an indictment or information; or
 - The date of the defendant's removal to this district.
 - (c) Related Procedures.

- (1) Upon the filing of an indictment or information, the clerk shall direct the defendant to appear before a judicial officer for arraignment at a stated time and date within 7 days from the filing of the indictment or information. The summons shall be accompanied by written notice advising the defendant of his right to retained counsel or to have counsel appointed and recommending that he appear with counsel. The defendant shall be advised that arraignment may take place without counsel of his choice if he fails to appear with such counsel at the specified time and date.
- (2) In the event of the issuance of a warrant, the judicial officer before whom the defendant is brought shall similarly schedule arraignment within 7 days, shall similarly adivse the defendant of his right to counsel and recommend that he appear with counsel and shall similarly advise the defendant that the arraignment may take place without counsel of his choice if he fails to appear with such counsel at the specified time and date.
- (3) At arraignment, the judicial officer shall take appropriate steps to assure that the defendant is represented by counsel and shall arrange to have counsel appointed where appropriate under the Criminal Justice Act and rule 44 of the Federal Rules of Criminal Procedure. The judicial officer shall also inform the defendant of this district's Revised Rule 50(b) Plan.
- (d) A defendant who signs a written consent to be tried before a magistrate shall, if no indictment of information charging the offense has been filed, be deemed indicted on the date of such consent, provided that notice of such consent is given the government and approved by a judicial officer.
 - 5. Time Within Which Trial Must Commence.

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(a) <u>Time Limits</u>. The trial of a defendant shall commence within 60 days of the arraignment.

- (b) Measurement of Time Periods. For purposes of this Rule (and not for purposes of considering Double Jeopardy claims):
- An arraignment shall be deemed to take place as provided in section 4(a).
- 2) A trial in a jury case shall be deemed to commence at the beginning of voir dire.
- 3) A trial in a non-jury case shall be deemed to commence on the day the case is called when the judge orders that the case have an "on trial" status.
 - (c) Discovery and Related Procedures.
- the defendant and his counsel of the court's Local Rule JDZ for Discovery, adopted in conjunction with this Plan, and the government shall supply the defense all matters described in Local Rule JDZ §(A)(1) and (2). Defendant's request for matters available under Local Rule JDZ §(A)(3)-7 shall be made within 7 days following arraignment, and all such matters shall be supplied to the defendant by the government within 7 days from defendant's request. Matters the government may request under Local Rule JDZ §B similarly shall be supplied within 7 days of such request, which shall be made during the period allowed the government to comply with defendant's request. Compliance with Local Rule JDZ shall be certified in writing to the court within 21 days following arraignment.
- (2) All motions which may be made prior to trial shall be filed within 14 days of the arraignment, except that motions seeking discovery or involving matters disclosed during discovery shall be filed within 28 days of the arraignment.
 - (d) Setting the Tria' Date. The trial judge shall have sole

responsibility for setting cases for trial. The trial date shall be set within the 60-day limit following arraignment.

- (1) Conflicts in schedules of counsel will not be grounds for a continuance or delayed setting of the trial date except under circumstances approved by the court and called to the court's attention at the earliest practicable time. The United States Attorney will assign or reassign cases in such a manner that the government will be able to announce its readiness for trial. The government must be ready within 60 days of arraignment, excluding time excluded under the Speedy Trial Act.
- (e) Retrial. The retrial of a defendant shall commence within 60 days from the date the order occasioning the retrial becomes final. If the retrial follows an appeal or collateral attack, the court may extend the period if unavailability of witnesses or other factors resulting from passage of time make trial within 60 days impractical. The extended period shall not exceed 180 days. (§3161[e]).
- (f) Withdrawal of Plea. If a defendant enters a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the arraignment with respect to the entire indictment or information shall be deemed to have been held on the day the order permitting withdrawal of the plea becomes final. (§3161[i]).

(g) Superseding Charges.

1) At the time of the filing of a complaint, indictment or information against a defendant charged in a pending indictment or information or an information dismissed on motion of the United States Attorney, the United States Attorney shall give written notice to the court if the new charge is not for the same offense charged in the original indictment or information or offense required to be joined therewith. 117

- 2) If the original indictment or information was dismissed upon motion of the defendant, or any charge contained in a complaint against an individual was similarly dismissed or otherwise dropped, and thereafter an indictment, information or complaint is filed charging the same person with the same offense or an offense based on the same conduct or arising from the same criminal episode, the time limit shall be determined without regard to the existence of the original charge. [§3161(d)].
- 3) If the original indictment is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information.
- dismissed upon motion of the United States Attorney before the filing of charge against the same defendant for the same offense, or any offense required to be joined with that offense, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge. (§3161[h][6]).
- 5) In cases in which paragraph (3) or (4) applies but no arraignment is held on the original indictment or information, the time limit for commencement of trial shall be computed as if such arraignment had been held on the last permissible day, determined under section 4(a).
- 6) The time within which an indictment or information must be obtained on a subsequent charge, or within which an arraignment must be held on such charge, shall be determined without regard to the existence of the original indictment or information.

- (h) <u>Pretrial Hearings</u>. All pretrial hearings on motions shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.
 - 6. Defendants in Custody.
- (a) <u>Time Limits</u>. Notwithstanding any longer time periods that may be permitted under sections 3, 4, and 5, the following time limits will also be applicable to defendants in custody as herein defined:
- 1) The trial of a defendant held in custody solely for the purpose of trial on a Federal charge shall commence within 90 days following the beginning of continuous custody in connection with such charge.
 - (b) Measurement of Time Periods. For the purposes of this section:
- 1) When a defendant is apprehended and held in custody outside this district, custody for the sole purpose of trial shall be deemed to begin (i) in proceedings under rule 40(b) of the Federal Rules of Criminal Procedure, upon the finding and recommendation or order by the magistrate or judge that a warrant of removal shall issue or upon the defendant's arrest pursuant to a warrant issued on an indictment or information filed in this district, and (ii) in cases initially processed under rule 20, at such time as the defendant rejects disposition under rule 20.
- 2) When a defendant is apprehended outside this district and is released pursuant to the provisions of chapter 207 of 18 U.S.C., the times set out above shall begin to run when the defendant returns to this district and appears before a judicial officer.
- 3) A trial shall be deemed to commence as provided in sections 5(b)(2) and 5(b)(3).
 - (c) Related Procedures.
 - 1) If a defendant is being held in custody solely for 11

the purpose of awaiting trial, the United States Attorney shall advise the court at the earliest practicable time of the date of beginning of such custody.

- 7. <u>Time Within Which Defendant Should be Sentenced.</u>
 This section of the Plan is a court guideline not mandated by the Speedy
 Trial Act:
- (a) <u>Time Limit</u>. The trial judge shall set a sentencing date at the time of conviction or pleas of guilty or nolo contendere. A defendant ordinarily shall be sentenced no later than 30 days after his conviction or plea of guilty or nolo contendere.

(b) Related Procedures.

- 1) The date of sentencing may be postponed only under circumstances approved by the court and called to the court's attention at the earliest practicable time.
- 2) If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere.
 - 8. Juvenile Proceedings.
- (a) <u>Time Within Which Trial Must Commence</u>. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. §5036.
- (b) <u>Time of Dispositional Hearing</u>. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. §5037(c).
 - 9. Exclusion of Time from Computations.
 - (a) Applicability. In computing any time limit under section 3,

4 or 5 the periods of delay set forth in 18 U.S.C. §3161(h) shall be excluded.

(b) Records of Excludable Time. The clerk of the court shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the clerk by the United States Attorney. The docket entries made pursuant to this paragraph are for administrative purposes only, except as provided by this section or by order of the court.

(c) Stipulations.

- 1) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.
- 2) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a codefendant for the limited purpose of determining, under 18 U.S.C. §3161(h)(7), whether time has run against the defendant entering into the stipulation.
- 3) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the court.

(d) Pre-Indictment Procedures.

1) In the event that either party seeks a continuance under 18 U.S.C. §3161(h)(8), such party shall file a written motion with the

court. The motion shall state (i) whether or not the defendant is being held in custody on the basis of the complaint, (ii) the period of time proposed for exclusion, and (iii) the basis of the proposed exclusion. In appropriate circumstances, such motion may include a request that some or all of the supporting material be considered ex parte and in camera.

§3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The court shall determine the frequency of such reports in the light of the facts of the particular case.

(e) Post-Indictment Procedures.

arraignment or trial beyond the time limits set forth in section 4 and 5, the court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. §3161(h). In the absence of a need for a continuance, the court will not ordinarily rule on the excludability of any period of time.

2) If it is determined that a continuance is justified, the court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. §3161(h)(8), the court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best

interests of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The court shall determine the frequency of such reports in the light of the facts of the particular case.

- 10. Sanctions.
- (a) <u>Defendants in Custody</u>. A defendant in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. §3164(b) shall, if the failure to commence trial was through no fault of the defendant or his counsel, be released subject to such conditions as the court may impose in accordance with 18 U.S.C. §3146. Nothing herein shall require that a defendant in custody be released except as required by 18 U.S.C. §3164(c).
- U.S. Attorney is not ready for trial within 60 days from the arraignment, and if the defendant is charged only with non-capital offenses, the defendant may move in writing, on at least 10 days notice to the government, for dismissal of the indictment. Any such motion shall be decided with the utmost promptness. The court' order dismissing the indictment shall be with prejudice unless the court finds that the government's neglect is excusable, in which event the dismissal shall not be effective if the government is ready to proceed to trial within 10 days. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this paragraph.

Computation of the 60 days shall not include time excludable under the Speedy Trial Act.

- (c) Alleged Juvenile Delinquents. An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. §5036 shall be entitled to dismissal of his case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his counsel, or would be in the interest of justice in the particular case.
- (d) <u>Dismissal Not Required</u>. Except as required by paragraphs

 (a), (b), and (c) of this section, failure to comply with the time limits prescribed in this Plan shall not require dismissal of the prosecution.

 The court retains the power to dismiss a case for unnecessary delay pursuant to rule 48(b) of the Federal Rules of Criminal Procedure.
 - 11. Persons Serving Terms of Imprisonment.

If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 U.S.C. §3161(j).

- 12. Monitoring Compliance With Time Limits.
- (a) Responsibilities of District Planning Group. As part of its continuing study of the administration of criminal justice in this district, the district planning group will pay special attention to those cases in which there is a failure to comply with the time limits set forth herein. From time to time, the group may make appropriate recommendations to prevent repetition of failures.
- (b) Responsibilities of Clerk. In addition to maintaining such statistical data as is required to be maintained by the Administrative Office of the United States Courts, the clerk will report monthly to the other members of the planning group each case in which there is a failure to

comply with any time limit set forth herein. In addition, the clerk shall have the responsibility for establishing the case monitoring system. To discharge the responsibility, the clerk is authorized to require such record keeping by the U.S. Attorney's office or other members of the planning group as may be necessary.

(c) Responsibilities of United States Attorney. The United States Attorney shall, within 5 days after the close of the reporting period, furnish each judge of the court with a biweekly report of persons in custody. The Marshal shall provide such assistance as may be necessary in the preparation of the report. The report shall indicate the judge to whom each case has been assigned. The "Reason for Detention" column shall include an explanation in any case for which the defendant's status appears to be inconsistent with the time limits set forth herein.

13. Effective Date.

...)

Upon approval of the reviewing panel designated in accordance with 18 U.S.C. §3165(c) and rule 50(b) of the Federal Rules of Criminal Procedure, the time limits and procedures set forth herein shall become effective on July 1, 1976, and shall supersede those previously in effect.

LOCAL RULE [JDZ] FOR DISCOVERY IN CRIMINAL CASES

(A copy of this rule shall be mailed to counsel of record upon the filing of his appearance or upon his initial incourt appearance, whichever event shall first occur).

Introduction

This local Rule [JDZ], effective July 1, 1976, is adopted in conjunction with the Revised Rule 50(b) Plan for the District of Connecticut.

It specifically implements Section 5(c) of the Plan which provides:

(c) Discovery and Related Procedures.

- (1) At the time of arraignment, the judicial officer shall advise the defendant and his counsel of the court's Local Rule JDZ for Discovery, adopted in conjunction with this Plan, and the government shall supply the defense all matters described in Local Rule JDZ §(A)(1) and (2). Defendant's request for matters available under Local Rule JDZ §(A)(3)-(7) shall be made within 7 days following arraignment, and all such matters shall be supplied to the defendant by the government within 7 days. Matters the government may request under Local Rule JDZ §B similarly shall be supplied within 7 days of such request, which shall be made during the period allowed the government to comply with defendant's request. Compliance with Local Rule JDZ shall be certified in writing to the court within 21 days following arraignment.
- (2) All motions which may be made prior to trial shall be filed within 28 days of the arraignment.

A. DISCLOSURE BY THE GOVERNMENT

At arraignment, or within 7 days of a request by the defendant when such a request is necessary under Paragraphs 3-8 to obligate disclosure, the Government shall furnish copies, or notify the defendant he may inspect or listen to and record items which cannot be copied, of the following items in the possession, custody or control of the Government, or the existence of which is known or by the exercise of due diligence may become known by the Government:

1. Statement of Defendant. Any relevant, written or recorded statements made by the defendant; the substance of any oral statement of which the Government has knowledge or intends to offer in evidence made by the defendant, whether before or after arrest in response to conversation by any person known to the defendant to be a Government agent; recorded testimony of the defendant before a grand jury which relates to the offenses charged.

Where the defendant is a corporation, partnership, association or labor union, the Government shall furnish to the defendant copies of relevant recorded testimony of any witness before the grand jury who (a) was, at the time of his testimony, so situated as an officer or employee at to have been able legally to bind the defendant in respect to conduct constituting the offense, or (b) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved. If any question exists as to such definition, the government may submit any such material to the court for in camera review and decision as to applicability.

- 2. <u>Defendant's prior record</u>. The prior criminal record of the defendant.
 - 3. Bill of Particulars.

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- a). If requested by the defendant within 7 days of arraignment, the Government shall provide a bill of particulars within 7 days of such request unless the Government files specific objection to such request. In the event such objection is filed, the bill of particulars shall be furnished as the court orders.
- b). Within 7 days of the defendant's receipt of the bill of particulars, the defendant may move to attack the sufficiency of the indictment as made more particular by the Government's bill of particulars.

- 4. <u>Documents and tangible objects</u>. If requested by the defendant, which request shall be within 7 days of arraignment, books, papers, documents, photographs, tangible objects, buildings or places, which (a) are material to the preparation of the defense or (b) are intended to be used by the Government as evidence in chief at the trial, or (c) were obtained from or belong to the defendant.
- 5. Reports of examinations and tests. If requested by the defendant, which request shall be within 7 days of arraignment, results or reports of physical or mental examination and of scientific tests or experiments which are material to the preparation of the defense or are intended for use by the Government as evidence in chief at trial.
- 6. Search and Arrest Warrant Documents and Things. If requested by the defendant, which request shall be within 7 days of arraignment, all warrants, applications, with supporting affidavits, testimony under oath, returns, and inventories for the arrest of defendant and for the search and/or seizure of the defendant's person, property, things, or things with respect to which the defendant has standing to move to suppress.
- 7. Electronic Surveillance Documents and Things. (a) If requested. by the defendant, which request shall be within 7 days of arraignment, all authorizations, applications, orders, and returns obtained pursuant to chapter 119 of Title 18 of the United States Code with respect to which the defendant has standing to move to suppress, and, (b) if requested by the defendant within 7 days of arraignment, and at reasonable cost to the defendant, all inventories, logs, transcripts and recordings obtained pursuant to chapter 119 of Title 18 of the United States Code with respect to which the defendant has standing to move to suppress.

- 8 List of Government Witnesses. If requested by the defendant, which request shall be within 7 days of arraignment, on a showing that the information is material to the preparation of the defense, that the request is reasonable in light of the circumstances of the case, and that there is a need for the disclosure which supervenes the need for concealment, a list of the names and addresses of all Government witnesses whom the Government intends to call in presentation of the case in chief, together with any record of prior felony convictions of any such witnesses, or benefits accruing to such witnesses by virtue of their testimony. If the Government, within the 7 days it has to comply with the defendant's request, files an objection to the request, the list of names and addresses of all the Government witnesses shall be furnished in such time and to such extent as ordered by the Court.
- 9. Brady v. Maryland, 373 U.S. 83 (1963), Material. All
 evidence which may be favorable to the accused on the issue of guilt or innocence within the scope of Brady v. Maryland, 373 U.S. 83 (1963).
 B. DISCLOSURE BY THE DEFENDANT
- 1. Documents and Tangible Objects. If the defendant requests disclosure under paragraph 4 of Part A of this Local Rule, within 7 days of defendant's request the Government may request that the defendant permit the Government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial. The defendant shall comply within 7 days of the Covernment's request.

2. Reports of Examinations and Tests. If the defendant requests disclosure under paragraph of Part A of this Local rule, within 7 days of defendant's request the Government may request that the defendant permit it to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony. The defendant shall comply within 7 days of the Government's request.

C. TIMING AND COMPLIANCE

- The parties shall certify in writing that there has been compliance with this order.
- 2. It shall be the continuing duty of counsel for both sides to reveal immediately to opposing counsel all newly-discovered information or other material within the scope of this Local Rule after formal certification.
 - 3. Upon sufficient showing, the court may, at any time upon motion properly filed, order that the discovery and inspection provided by this Local Rule he denied, restricted or deferred, or make such other order as is appropriate.

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK		
	-x	
UNITED STATES OF AMERICA		
- v -	:	MEMORANDUM DECISION
MICHAEL J. TICHE,		76-CR 11.4D, OF N. Y.
Defendant.	:	FILED
		JUN 1 1976
	-x	AT O'CLOCK M.
HENRY F. WERKER, D. J.		ALBANY.

Defendant, Michael J. Tiche, has moved to dismiss the indictment in this case for failure to commence a retrial under the Rule 50(b) Plan for Interim Requirements of the Speedy Trial Act either as adopted by the United States District Court for the District of Connecticut or as adopted by the United States District Court for the Northern District of New York.

The chronology of events which give rise to this unusual situation are as follows:

On May 8, 1975 the defendant and nine others were indicted on charges based on the firebombing of the Sponge Rubber Products Company Plant No. 4 in Shelton, Connecticut on March 1, 1975. The trial began on October 6, 1975 and ended on February II, 1976. Defendant Tiche's motion for a mistrial was granted on February II, 1976 when the jury indicated that it could not agree on a unanimous verdict as to him. On February 19, 1975, Tiche's appointed counsel filed a motion to withdraw and on March 26, 1975 a motion for change of venue was filed. On March 26, 1976 a hearing was held on both motions.

During the course of the argument on the motion for change of venue counsel for defendant expressly declined to waive a speedy trial. On March 31, 1976

the motion to withdraw and the motion for change of venue were granted and the case transferred to the Northern District of New York. This motion was granted "in the interest of justice."

The order transferring this case from Connecticut was dated April 13, 1976. I was not officially designated to hear this case in the Northern District until April 22, 1976, although I had been unofficially informed of the designation prior to that date. On April 14, 1976 William J. Quinlan, Esq. was a signed as counsel to Michael Tiche. On April 19, 1976 a preliminary conference was held in my chambers in New York with the Assistant United States Attorney William Dow, Esq. and William J. Quinlan, Esq. At this time it was learned that the trial record alone would consist of some 13,000 pages. In addition there were numerous exhibits and voluminous 3500 materials which defense counsel would have to read before he was ready for trial. The trial record was not at that time prepared. It was estimated that the defense counsel would be in a position to make motions by May 17, 1976 including the motion to dismiss which is now under consideration. On May 17, 1976 this motion was heard among others. At that time defense counsel had 9,000 pages of the trial record and requested a continuance of the trial date until June 7, 1976 in the event that I should deny this motion.

Defense counsel argues that the retrial of criminal cases in either Connecticut or Northern New York is governed exclusively by the interim plans adopted by those Districts. In my opinion this case must be determined by the Connecticut plan since it originated in Connecticut. Since the plans are virtually identical this is not dispositive of the problem. I have reached this conclusion since in my opinion February II, 1976, the date of mistrial, not the date when the indictment was filed, is the date from which the period for retrial must be counted. The importance of this distinction arises from the fact that Connecticut's interim

plan which was in effect at the time the indictment was filed provided 90 days for retrials and contained a "good cause shown" escape hatch² while the plan in effect on February II, 1976 did not.

The Connecticut plan which was adopted and became effective on September 29, 1975 provides:

"7. Retrial

"Where a new trial has been ordered by the District Court or a trial or a new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event, not later than 60 days after the finality of such order. If the defendant is to be retried following an appeal or collateral attack, the court trying the case may extend such period for a total not to exceed 180 days from the date on which the order occasioning the retrial becomes final, where unavailability of witnesses or other factors resulting from passage of time shall make trial within 60 days impractical."

The interim plan adopted by the District of Connecticut does not actually include a paragraph which permits the extension of this time period. The only section which provides for excluded periods is paragraph 6³ which only extends the time within which the government must be ready for trial and does not extend the time within which trial must begin after the government is ready. Furthermore, paragraph 6 refers explicitly to paragraph 5 which relates to trial readiness and the effect of noncompliance. Thus a strict interpretation of the statute would yield the absurd result that where the government is ready for trial, the sixty-day period for a retrial could not be extended for any reason, including, for example, the unavailability of the defendant.

Furthermore, it should be noted that there is no reference in paragraph 7 to any of the excluded periods mentioned in paragraph 6 of the plan nor does paragraph 6 of the plan make reference to paragraph 7.

For the following reasons, the court holds that this is an incorrect interpretation and application of the relevant statutes. First, on July I, 1976, a Revised Rule 50(b) Plan will go into effect to ensure compliance with the more stringent requirements of the Speedy Trial Act before its sanctions become effective in 1979. Under this plan, which will be effective in about five weeks, paragraph 9 provides that in computing the 60-day period for retrials, "the periods of delay set forth in 18 U.S.C. § 3161(h) shall be excluded." The failure of the current interim plan to apply the periods of delay to retrial must be considered an oversight on the part of the drafters.

Furthermore, since there is no provision for excluded periods in calculating the time within which the trial must commence, the court must look to other applicable statutory provisions to fill the gap. The Speedy Trial Act, 18 U.S.C. § 1361 includes a section on excluded periods, 4 many of the provisions of which are not even included in paragraph 6 of Connecticut's Plan. While the Act postpones the effective dates of some of its subsections, 5 no provision delays the effective date of § 3161(e) or § 3161(h).6 I therefore conclude that § 3161(h)(l)(F) which allows an exclusion for the period of "delay resulting from proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure" applies to the retrial of this defendant. 7

The order transferring this case to the Northern District of New York was signed on April 13, 1976 and was received the next day. Thus, the sixty-day period would run from April 13, 1976. I consider the time period from February 19 to April 13 as delay resulting from proceedings relating to the transfer from another district. It should be pointed out that any other interpretation would produce the anomolous result that the sixty-day period had run before the order transferring the case was signed.

Thus the court concludes that as long as the trial of this defendant commences on or before June 13, 1976, the time limits applicable to this action will have been satisfied.

SO ORDERED.

DATED:

New York, New York

May 28, 1976

Henry Threeker

UNITED STATES OF AMERICA v. MICHAEL J. TICHE, 76-CR-44

NOTES

- 1. Paragraph 7 of both plans relates to retrials and the paragraphs are identical.
- 2. United States v. Drummond, 511 F.2d 1049 (2d Cir. 1975) is a case decided under the Eastern District Rule which contained a similar "good cause" provision on retrial. In that case, the Second Circuit upheld a judgment of conviction obtained after a retrial which began after the ninety day period had run.

6. Excluded Periods.

In computing the time within which the Government should be ready for trial under Rule 5, the following periods should be excluded:

- (a) The period of delay while proceedings concerning the defendant are pending, including but not limited to, proceedings for the determination of competency and the period during which he is incompetent to stand trial, pretrial motions, interlocutory appeals, trial of other charges, and the period during which such matters are sub judice.
- (b) Periods of delay resulting from a continuance granted by the district court at the request of, or with the consent of, the defendant or his counsel, in writing or stated upon the record. The district court shall grant such a continuance only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges. A defendant without counsel should not be deemed to have consented to a continuance unless he has been advised by the court of his rights under these rules and the effect of his consent.
- (c) The period of time during which:
 - (i) evidence material to the Government's case is unavailable, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period; or
 - (ii) the prosecuting attorney is actively preparing the Government's case for trial and additional time is justified by exceptional circumstances of the case.
- (d) The period of delay resulting from the absence or

unavailability of the defendant. A defendant should be considered absent whenever his location is unknown. A defendant should be considered unavailable whenever his location is known but his presence of [sic] trial cannot be obtained by due diligence.

- (e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case.
- (f) The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial.
- (g) The period during which the defendant is without counsel for reasons other than the failure of the court to provide counsel for an indigent defendant or the insistence of the defendant on proceeding without counsel.
- (h) Other period of delay occasioned by exceptional circumstances.

4. Section 3161(h) provides:

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(I) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to--

(A) delay resulting from an examination of the defendant, and hearing on, his mental competency, or physical incapacity;

(B) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United

States Code;

(C) delay resulting from trials with respect to other charges against the defendant;

(D) delay resulting from interlocutory appeals;

(E) delay resulting from hearings on pretrial notions;

(F) delay resulting from proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure; and

(G) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the dendant to demonstate his good conduct.

(3) (A) Any period of delay resulting from the absence or

unavailability of the defendant or an essential witness.

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand

trial.

(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, Ur d states Code.

(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filled against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the trial has not run and

no motion for severance has been granted.

(8) (A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph

(A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section.

(iii) Whether delay after the grand jury proceedings have commenced, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the Government.

(C) No continuance under paragraph (8)(A) of this subsection shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

- See 18 U.S.C. § 3163 which postpones the effective date for § 3161(b), 3161(c) and 3162.
- 6. I conclude that the first sentence of \$ 3161(h) which provides: "The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence" includes retrials under 3161(e).
- 7. See United States v. Guillette, Crim. No. H-524 (D. Conn., May 29, 1975).

RULING ON MOTION TO TRANSFER.

FILED

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U. S. EISTRICT COURT NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

V.

CRIMINAL NO. N-75-59

MICHAEL J. TICHE

RULING ON MOTION TO TRANSFER

Defendant Michael J. Tiche has moved pursuant to

Fed. R. Crim. P. 21 for a transfer of the charges pending
against him in this district to another district in view of
the extensive publicity that has occurred in this district.

Defendant was tried along with eight co-defendants in an
extensive trial that lasted five months. As to this defendant,
the jury reported a disagreement, and a mistrial was granted,
on the defendant's motion, on February 11, 1976. The Government does not oppose a transfer. Dispute has arisen as to
the appropriate transferee district. Defendant suggescs
several sites including Buffalo, New York; the Government
prefers a location more convenient to witnesses from
Connecticut.

The trial received extensive press coverage in this district. While it may be possible to select a jury that could fairly try the defendant, the flexibility that exists within the federal system to imize the difficulties of empaneling an impartial jury ought to be used in this instance to transfer the trial to another district "in the interest of

RULING ON MOTION TO TRANSFER.

justice." Rule 21(b). A site reasonably convenient both to the defendant, who lives in Pennsyl ania, and to the numerous Connecticut witnesses is Albany in the Northern District of New York. I have been assured that in the event of a transfer, a trial judge will be specially designated to preside at the trial so that the transfer will not impose upon the already overburdened judges of the Northern District.

Accordingly, it is hereby ORDERED that the proceedings in Criminal No. N-75-59 against defendant Michael J. Tiche are transferred to the Northern District of New York.

Dated at New Haven, Connecticut, this 31st day of March, 1976.

Jon O. Newman

United States District Judge

MEMORANDUM, CHIEF JUDGE FOLEY AFTER TRANSFER.

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

MICHAEL J. TICHE

ND NY - 76-CR-44 (CRIMINAL NO. N-75-59 DISTRICT OF CONNECTICUT)

MEMORANDUM

In a written ruling on a motion by the above defendant, Michael J. Tiche, to transfer the charges pending against him in the District of Connecticut to another district in view of extensive publicity that has occurred in Connecticut, District Judge Jon O. Newman transferred the proceedings against Tiche to this Northern District of New York. In the writing, Judge Newman sets forth briefly the background facts and the reasons for his decision favorable to the defendant to transfer the case to this District Court for trial at Albany, New York.

The Clerk of this District Court has assigned Docket No. 76-CR-44 to this case. The case shall be added to the March Session Criminal Calendar that is continuing for trial to be held in the Main Courtroom, United States Post Office and Courthouse, 445 Broadway, Albany, New York. United States District Judge Henry F. Werker of the Southern District of New York has agreed to accept special designation by Chief Judge Irving R. Kaufman to preside at the trial. On April 14, 1976, I appointed Attorney William J. Quinlan of the firm of Mead, Begley Quinlan, 133 Wall Street, Schenectady, New York 12305, under the Criminal Justice Act to represent defendant Michael J. Tiche in the proceedings and trial in this District Court.

Copies of this memorandum shall be mailed by the Clerk to Judges Newman and Werker, defendant Tiche, Attorney Quinlan, United States Attorney James M. Sullivan, Jr. of this District, and United States Attorney Peter C. Dorsey of the District of Connecticut.

Dated at Albany, New York, this 15th day of April 1976.

UNITED STATES DISTRICT JUDGE

DESIGNATION OF DISTRICT JUDGE BY CHIEF JUDGE KAUFMAN.

AO Form 25-B (Rev. 12-70)

DESIGNATION OF DISTRICT JUDGE FOR SERVICE IN ANOTHER DISTRICT WITHIN HIS CIRCUIT

WHEREAS, in my judgment the public interest so requires; Now, therefore, pursuant to the provisions of section 292 (b) of Title 28, United States Code, I do hereby designate and assign the Honorable HENRY F. WERKER,

United States District Judge for the Southern District of New York
to hold a district court in the Northern District of New York during
the period beginning May 17, 1976*, and and ending
kxxx, and for such additional time in advance thereof to prepare for the trial of cases,
or thereafter as may be required to complete unfinished business.

*for t'e purpose of hearing and deciding the matter of <u>United States</u> v. <u>Michael J. Tiche</u>, Docket No. 76-CR-44.

Chief Judge

Second Circuit

Dated April 22 ,19 76

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other party. I think for a statement to be made in rebuttal summation that the defense could have called such a witness is entirely improper.

THE COURT: I will deny the motion and we will take a recess until twelve o'clock and we will charge the jury. I am not going to let it go until after lunch.

(Proceedings continue in open court).

THE COLAT: Ladies and Gentlemen of the Jury, I am going to take a recess until twelve o'clack, and then I will charge the Jury. In the meantime, please do not discuss it. For the last time, do not discuss it. We will take a recess until twelve o'clock.

(Recess was taken) .

(Proceedings continue).

THE CLERK: Anyone who wishes to leave the courtroom was: do so now, as no one will be allowed to leave while the Judge is charging the Jury.

CHARGE TO THE JURY

THE COURT: Madam Forelady and

Ladies and Gentleme. If the Jury: Now that the

evidence is all in and Counsel have summed it up

their respective contentions, the time has come for

you and I to perform our respective functions in the administration of justice in this case.

As I stated to you at the outset, it is my duty to instruct you as to the principles of law to be followed, and it is your duty to accept those instructions as they are given by me and apply them to the evidence in this case.

I am asking the last juror: Can you hear me?

JUROR: Yes.

THE COURT: All right. The indictment against this defendant is not evidence and it
does not carry with it any presumption of guilt. It
is merely a means by which the defendant and the
jury are informed of charges or accusations and the
means of bringing the defendant to trial.

The defendant in this case has pleaded not guilty, and by that plea has put in issue each of the elements of the charges made against him. You may not give any weight whatever to the fact that the indictment has been returned against the defendant. It is your duty to determine the facts as derived from your consideration of the evidence in this case, and then applying the principles of law to decide whether the defendant on trial before

you is guilty or not guilty of any of the charges so made against him. You are the sole and exclusive judges of the facts. If your recollection of the evidence differs in any way from the recollection of Counsel or the Court, your recollection controls and should be relied upon by you. Your judgment as to what the facts are controls. You must approach your duty with complete fairness and impartiality.

The Government and this defendant are entitled equally to justice in this court. The fact that this prosecution is brought in the name of the United States of America does not entitle the Government to any greater consideration than any other litigant would get. But by the same token, it is entitled to no less consideration. The issues in this case must be decided upon the evidence and the law.

Before I turn to the indictment
in this case and the charges that I made against
few
the defendant here, let me give you a/basic principles
that should govern you in your deliberations.

Under your oaths as jurors you should not, and can not allow sympathy for the defendant or consideration of punishment which he might receive if he is found guilty to enter into

your deliberations or to affect or influence your judgment in any way. The duty of imposing sentence in the event of a conviction would rest exclusively upon the Court and upon the Court's own conscience.

During the trial I have been called upon to make rulings from time to time. I have sustained some objections; I have overruled others. And on one or two occasions, I may have ordered testimony stricken and have advised you to disregard it. It is important in the performance of your duties that you limit your consideration of the evidence to that which was actually received in the case and not to give any consideration to any evidence that was stricken. It is equally important that you do not draw inferences against ei her side because of any objection that Counsel may have made due to the fact that it may have been necessary from time to time to engage in conferences at the side bar or to exclude you from the courtroom altogether. Under our system of justice in this country, it is the function and duty of Counsel to object to anything that they think is legally improper, and they would be remiss in their duty if they failed to do so. But it is my function and duty to rule on these questions of law, and I would be remiss in my duty

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if I failed to make such a ruling, even though sometimes that may not have been to the liking of Counsel for either side.

If during the course of the trial, from my rulings or questions or facial expressions, and sor a of the questions I may have put to a witness, you got the impression that I personally have any views on credibility of any witness or on the weight to be given to their testimony or to the proof or to the merits of the case, please disregard it. It is not my intention to imply or express any opinion or any views to you with respect to the facts in the case or the merit or credibility of any witness. That is your sole and exclusive function. Any questions which I may have put to witnesses during the course of the trial have been put to those witnesses for purposes of what I hoped was to be clarification of issues which you might ultimately decide. It was not to give you the impression that I was siding one way or the other. Whatever my feelings may be in this matter are completely immaterial and irrelevant.

Let me give you a few more basic principles of general application, and I feel that this repetition is important.

An indictment, as I said at the outset, is nothing more than a written charge or an accusation. It is the method by which the Government brings a defendant into court for trial on charges that are made under that indictment. No reference is to be drawn from the indictment or from the fact that an indictment has been filed. The Grand Jury was not asked to determine whether this defendant was guilty or not guilty of the charges contained in the indictment. That is your function as juros, and your function alone. The defendant, as I have stated, has pleaded not guilty, and by doing so, he has put into issue every element of each of the crimes charged in the indictment.

Under our law, every defendant, and that is true of the defendant in this case, is presumed to be innocent. That presumption of innocence is in each defendant's favor throughout the entire trial and even into your deliberations in the jury room. It is overcome only if, as and when you determine that his guilt has been established beyond a reasonable doubt by the credible evidence in this case. The burden is upon the Government to establish this guilt beyond a reasonable doubt, and that burden applies to each element of the crimes

charged against the defendant. That burden never shifts to the defendant. It always remains the Government's, right down to the end of the trial.

I have mentioned the term beyond a reasonable doubt. What does that mean? Reasonable doubt: a reasonable doubt founded upon reason. As the words imply, it is such a doubt as will be entertained by reasonable men after all the evidence in the case is carefully analyzed, compared and weighed. A reasonable doubt may arise not only from the evidence introduced but also from a lack of evidence. Since the burden is upon the Government to prove the defendant guilty beyond a reasonable doubt of every essential element of each crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. However, absolute or mathematical certainty is not required, but there must be such certainty as satisfies your reason and judgment, and such that you feel conscientiously bound to act upon it. It is not a fanciful doubt or a whimsical or capricious doubt, for anything relating to human affairs and depending upon human testimony is open to some possible or imaginative doubt. A reasonable doubt is such doubt as would cause a prudent person to

hesitate before acting in matters of importance to himself or herself. In other words, if the evidence

in your judgment, the conclusion that a defendant is guilty so as to exclude every other reasonable conclusion, you should declare him to be guilty. On the other hand, if on all the evidence you have a reasonable doubt as to the guilt of a defendant, you must find him not guilty.

Whenever, in these instructions, I tell you that a certain element must be established before there can be a conviction on a certain count, I mean that this element must be established according to the standard of proof I have just explained. That is, proof beyond a reasonable doubt. The standard applies to every finding that is essential to a conviction of the defendant on any count. So if I don't repeat that standard of proof each time, bear in mind that it applies every time I speak to you about an element of the offense or a finding that you are entitled to make. So with respect to all such elements or findings necessary for conviction on any count, I instruct you that you may not conclude that such an element or such a finding is established simply because you may think the weight of the evidence tips somewhat in the favor of the Government

The standard of proof is beyond a reasonable doubt.

Now, as to the charges, you may well be surprised to learn that the defendant is not charged with the crime of arson. That is an offense under the State law, and in and of itself violates no Federal statute. The defendant is charged in his Federal trial with violations of four different Federal statutes. Your task is to determine whether or not the Government has proved beyond a reasonable doubt that the defendant is guilty of violating one or more of these particular Federal statutes. But I emphasize that the only charges for you to consider are the four Federal law violations set forth in the indictment.

explaining each of the charges or counts of the indictment in detail, let me give you a summary of them so that you will have them all generally in mind as I discuss each one.

There are four counts. That is
four separate violations of Federal law are charged.
Counts two, three and four charge what are called
substantive offenses. That is, the actual commission
of a crime. Count one charges a conspiracy. That is
a combination of two or more persons who agree to

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commit a crime.

I will start with the substantive offenses. Count two charges the defendant with a violation of the Interstate Travel Act. That is, travelling from one state to another with the intent to promote an arson, and thereafter performing some act to promote an arson.

Count three charges the defendant with transporting explosives from one state to another with the knowledge and intention that the explosives would be used to destroy Plant Four at Shelton.

Count four charges the defendant with possession of a destructive device that was not registered to him or any of the persons who were charged. These are the three substantive offenses.

Count one charges the defendant with the offense of conspiracy, specifically, a conspiracy to commit the crime charged in count two, interstate travel to promote an arson.

One preliminary point: Before I turn to the counts in detail, what I am about to discuss at this point concerns the three substantive counts and not the conspiracy count. With respect to each of the substantive counts, there are two ways which a defendant can be found guilty. One is as a

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principal. That is, that he is found beyond a reasonable doubt to have committed the offense himself and to have had the requisite knowledge or intent. The second way a person may be found guilty of an offense is as an aider or abettor. That is, he is found beyond a reasonable doubt to have aided or abetted someone else to commit the offense and he has the same knowledge or intent required for conviction as a principal.

If a person aids or abets another to commit a crime, then he may be found guilty of the crime even if he did not personally do each act necessary to constitute the offense charged.

Section 2 of the Criminal Code provides as follows:

"Whoever commits an offense against
the United States or aids, abets, counsels, commands,
induces or procures its commission is punishable as
a principal."

Under this statute, every person who wilfully participated in the commission of the crime may be found to be guilty of that offense. Participation is wilfull if done voluntarily and intentionally and with the specific intent to do something the law forbids. That is to say, with bad purpose, either to

disobey or disregard the law.

In order to aid and abet another to commit a crime, as necessary that the accused wilfully associate himself in some way with the criminal venture and wilfully participate in it as he would in something he wishes to bring about. That is to say, that he wilfully seeks by some act of his to make the criminal venture succeed. To be guilty as an aider or abettor, a person must be shown beyond a reasonable doubt to know the objective of the criminal venture and to intend by his actions to help make that venture succeed. He must also be shown beyond a reasonable doubt to have the same knowledge or intent required for conviction as a principal. A person can not be convicted of aiding and abetting in the commission of a crime taless the evidence establishes beyond a reasonable doubt that the crime occurred and that some other person performed the acts constituting the crime.

A person cannot be guilty of any crime, either as a principal or as an aider or abettor or as a conspirator simply by being present during the commission of a crime. Even if he has knowledge that a crime is being committed, there must be proof beyond a reasonable doubt that a

defendant participated in the criminal offense, that he in some way took action to help make the venture succeed.

If you find with respect to the defendant on any count that he is guilty as an aider or abettor, your verdict is simply guilty on that count without any special mention of the aiding or abetting statute.

Now, count two, the first of the substantive counts, charge violation of Section 1952 of the Criminal Code. That Section reads as follows:

"Moever travels in interstate commerce with intent to ...3, promote, manage, carry on or facilitate the promotion, management or carrying on of any unlawful act vity and thereafter performs or attempts to perform, any of the acts specified in said paragraph 3 shall be punished.

"(b) As used in this section, unlawful activity means arson in violation of the laws of a state in which committed."

Count two of the indictment reads as follows:

"On or about February 28, 1975 in

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the district of Connecticut and elsewhere, David N. Bubar, Peter Betres, Dennis Tiche, Michael J. Tiche, John W. Shaw, Ronald Betres, Albert Coffey, Anthony A. Just, Donald L. Connors and Charles B. Mullen, did travel and cause travel in interstate commerce between Butler, Boyers and Pittsburgh, all in the Commonwealth of Pennsylvania, in New York in the State of New York, and Shelton, Derby, Danbury and New Haven in the State of Connecticut, with the intent to promote, manage, carry on and facilitate the promotion, management and carrying on of an unlawful activity, to wit: the commission of arson in violation of Section 53A-113, Connecticut General Statutes, revised 1958 as amended, and did perform acts, to promote, manage, carry on and facilitate the promotion, management, carrying on of such unlawful activity in violation of Title 18, United States Code, Section 1952 and 2.

There are three elements of the crime charged in count two, each of which must be proven beyond a reasonable doubt before there can be a conviction of the defendant on count two. I will first list them and then add some explanation.

The first element is that the defendant travelled in interstate commerce on or

about February 28, 1975.

The second element is that he travelled with a certain intent. Namely, the intent to promote, manage, carry on or facilitate the promotion, management or carrying on of an arson in violation of the laws of Connecticut.

The third element is that at a time subsequent to such interstate travel he performed or attempted to perform one or more acts to promote, manage or carry on or facilitate the promotion, management or carrying on or an arson.

The first element of interstate
travel simply means travelling from any place in one
state to someplace in another state. The Government
contends that the defendant did travel from one state
to another on or about February 28. They contend
that Michael Tiche went with John Shaw and Dennis Tiche
from Pennsylvania to New Haven, Connecticut and then
to the Plant.

The second element concerns the intent a person has when he travels interstate. He must be shown to have the intent to promote, manage and carry on or facilitate the promotion, management or carrying on of an arson in violation of Connecticut law.

To facilitate simply means to do some act that assists or makes easy the act in question, here, the arson.

I instruct you that a person commits arson in violation of Connecticut law if he recklessly causes destruction of a building of his own or another by intentionally starting a fire or causing an explosion. It is not necessary that the defendant intends to violate any specific section of Connecticut law. It is sufficient that he intended to take some step to help bring about the arson, and that he knew that arson was unlawful.

Now, in determining whether the defendant had the requisite intent, that is the second element of the offense charged in count two, you are asked to determine what was in his mind, what he was thinking. You will also have to consider a defendant's intent and knowledge with respect to all the other counts as well, so let me say a few words about how you are to approach the task in determining whether the Government has proved the intent beyond a reasonable doubt.

Obviously, you cannot look into a person's mind to find out what he knows or what he intends. A person's intent and knowledge can ordinarily be inferred from what he does or what he says in the

light of the circumstances under which he acts or speaks. So in deciding whether the defendant had the requisite intent, that was the second element of count two. You should first consider what facts you find established as to what that person said or did in the circumstances under which he spoke or acted, and then consider whether you chose to draw from those facts, the inference that the requisite intent was in the mind of the defendant. Of course, this element of intent, like all other elements, must be established beyond a reasonable doubt to support a conviction on these counts. You will recall that when I first mentioned this element of intent I referred to it in the context of a defendant travelling with the requisite intent. I emphasized that now because in order to find this second element established, you must be persuaded beyond a reasonable doubt that the defendant had the requisite intent when he travelled into Connecticut. If you find the defendent formed the requisite intent only after travelling to Connecticut, then the defendant must be acquitted on count two. But you could find this element of intent established if you are persuaded beyond a reasonable doubt that the defendant's actions or words under all the circumstances, even

after travelling to Connecticut, support the inference that he did have the requisite intent at the time he travelled to Connecticut. More simply, what a person does at one point in time can be considered as evidence of what his intent was at a somewhat earlies point in time.

the doing of the attempt to do some act after the interstate travel to promote or in some way help carry out the arson. The act itself does not have to be unlawful, but it must be an act that either helps or attempts to help to bring about the arson. The Government contends that the defendant did perform such an act after his interstate travel. They contend that Michael Tiche along with Shaw and Dennis che, placed the dynamite and gasoline in Plant 4.

Now, count three charges a violation of Section 844.(d) of the Criminal Code. That Section reads as follows:

"Whoever transports in interstate commerce, any explosives with the knowledge and intent that it will be used unlawfully to damage or destroy any building shall be punished."

Count three reads as follows:

"On or about the 28th day of

where, David N. Bubar, Peter Betres, Dennis C. Tiche, Michael J. Tiche, John W. Shaw, Ronald Betres, Albert R. Coffey, Anthony A. Just, Donald L. Connors and Charles D. Mullen did transport in interstate commerce from Boyers in the Commonwealth of Pennsylvania to Shelton in the State of Connecticut, explosives. That is, dynamite, detonating or primer cord and blasting Japs, Lacwing and intending that the said e. plosives would be used unlawfully to destroy a building on Canal Street in Shelton, Connecticut, known as Plant No. 4, Sponge Rubber Products Company, in violation of Title 18, United States Code, Section 844.(d) and 2."

With respect to the first element,
the statute defines explosive to include all forms
of high explosives, blasting materials, detonators
and detonating agents. You would be entitled to include
that dynamite is an explosive within the meaning of
Section 844.(d).

An explosive is used unlawfully to destroy a building if it is used in the course of an arson in violation of State law. As with count two, the requisite knowledge or intent to count three must be found to exist at the time of

the transportation of the explosive or prior to such transportation.

Now, in considering count three you will again be concerned with the distinction I previously explained between those who mar be found guilty as principals and those who may be found guilty as aiders and abettors. The Government's evidence if you accept it, would tend to establish that this defendant did not actually transporan explosive from Pennsylvania to Co lecticut. As to the defendant, the Government conter is that he is guilty of count three in that he knowingly aided and abetted in transporting the explosives. Bear in mind the standards that I have previously explained as to what constitutes aiding or abetting. Without repeating them in detail, let me simply remind you that they require that a person know the objective of the criminal venture, and by its action, participate in it. That is, make it his own or in some way act to help bring about the commission of the offense. And again, I remind you that an aider or abettor under count three must be shown to have the same intent required for conviction as a principal.

You will also recall that I told you a person can be found guilty as an aider or

abettor only if someone else, the principal, committed the acts constituting the offense.

With respect to count three, if you find that the explosives were transported from Pennsylvania to Connecticut, in any event, you could still find the defendant guilty of count three if you find bayond a reasonable doubt that he knowingly aided and abetted the transportation of explosives. Of course, before you could make such a finding, you would have to find that the defendant knew or intended the explosives would be used to destroy Plant 4 and that the defendant took some act to join the criminal venture of transporting the explosives and help make that venture succeed. The government contends that defendant did take some action that makes him liable as an aider or abettor of the transportation, that Michael Tiche helped to prepare the truck's cargo and loaded the truck.

I instruct you that before the defendant can be found guilty of aiding and abetting in interstate transportation of explosives as charged in count three, you must be persuaded beyond a reasonable doubt that he took action to become an aider or abettor, as I have defined those terms, sometime prior to the interstate transportation

the defendant as to count three, first decide
whether explosives were transported from Pennsylvania
to Connecticut. If you find they were, then as to
the defendant, decide whether you are persuaded
beyond a reasonable doubt that he took some action
before that transportation but not after it that
aided or abetted that transportation. If he did,
then decide whether you are persuaded beyond a
reasonable doubt that at the time he took such
action but not after, he knew that he was aiding or
abetting the transportation of explosives and knew
or intended that those explosives would be used to
destroy a building.

Now, count four charges a violation of Title 26, United States Code, Section 5861(d).

That section reads as follows:

"It shall be unlawful for any person to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record."

Count four reads as follows:

"On or about March 1, 1975 in the district of Connecticut and elsewhere, Charles D. Mullen, David N. Bubar, Peter Betres, Ronald D.

Betres, Albert R. Coffey, Anthony A. Just, Dennis
C. Tiche, Michael J. Tiche, John W. Shaw and
Donald L. Connors did wilfully and knowingly receive
and possess a firearm as defined in Title 26
United States Code, Section 5845,A,8 and Title 26
United States Code, Section 5845,Fl(a), to wit: a
destructive device consisting of dynamite, detonating
or primer cord, blasting caps and gasoline, which
firearm was not registered to any of them in the
National Firearms Registration and Transfer Record
as required in Chapter 53 Title 26, Phited States
Code, a violation of Title 26 United States Code
Section 5861(d) and 5871, and Title 18 United States
Code Section 2."

There are three elements of the crime charged in count four, each of which the Government must prove beyond a reasonable doubt before there can be a conviction on that count.

The first element is that the defendant on or about March 1, 1975, did possess a firearm within the meaning of that statute.

The second element is that his possession was knowing. That is, that he knew that what he possessed was a firearm.

The third element is that at

the time of possession, the firearm was not registered to him in the National Firearms Registration and Transfer Record.

with respect to the first element, possession of a firearm, the statute includes a definition of what constitutes a firearm. Included in that definition is the term "a destructive device", and destructive device is defined to mean any explosive bomb. In this case the Government contends that the assembled device consisting of barrels full of gasoline, sticks of dynamite, under them, detonating cord running to the dynamite and a timing device to activate the detonating cord is the destructive device or form that was possessed by the defendant.

While dynamite alone does not constitute a destructive device within the meaning of this statute, if you find there was, in Plant 4 on the night of March 1, an seembled device of dynamite, detonating cord, gasoline and a timing device so constructed as to detonate the dynamite and ignite the gasoline and cause an explosion and fire, you would be entitled to conclude that this device was a destructive device or firearm within the meaning of the statute.

I should point out that this is

the only device the possession of which can be considered in connection with count four.

There was some testimony about a pistol, but I instruct you that possession of that firearm, if it occurred, is not sufficient to prove the offense charged in count four. The possession required for this first element need not be solely in the possession of one person. Two or more persons may jointly share possession of an item so long as each has direct physical control over the item.

As to the second element, knowing possession simply means that the defendant knows that what he possesses is a destructive device.

It is not necessary that he know that the device comes within the statutory definition of Federal law, nor is there any requirement that a defendant know that the device must be registered or know that it is in fact not registered, but there must be evidence that proves beyond a reasonable doubt that he knew what was possessed was a destructive device. In this case, a device capable of causing explosion and fire.

The third element is simply the fact that the device was not registered. You will recall

there are in evidence certificates showing that a search was made in the National Firearms Registration and Transfer Record, and that this search disclosed no record of a destructive device registered to any of the defendants. You are entitled, though not required, to conclude that these certificates establish the third element of this offense. Again, as with the other substantive offenses, you have to give consideration to the distinction between principals and aiders or abettors. The government's evidence, if you accept it, would tend to show that the destructive device was possessed in Plant 4 by Dennis and Michael Tiche along with John Shaw. The Government has also offered evidence to prove that the defendant took some action to aid or abet the possession of the destructive device. I have previously explained what sort of action and state of mind is necessary to constitute someone as an aider or abettor. Of course, the defendant cannot be convicted as an aider or abettor under count four unless you find beyond a reasonable doubt that he knew about the destructive device and intended, by his action, to participate with others in their possession of that device.

Now, thus far I have been discussing

the three substantive charges charged in counts two, three, and four. Now let me turn to the conspiracy count charged in count one.

Section 371 of the Criminal Code
provides. "if two or more proons conspire to commit
any offense against the United States, and if one
or more of such persons do any act to effect the
object of the conspiracy, each shall be punished."

Count one charges the defendant with compiring to commit the substantive offense charged in count two. That is the interstate travel offense. Specifically, count one reads, that "commencing on or about the month of December, 1974, the precise date being to the Grand Jury unknown, and continuously thereafter up to and including the date of filing of this indictment in the district of Connecticut and elsewhere, Charles D. Mullen, David N. Bubar, Peter R. Betres, Ronald D. Betres, Albert Coffey, Anthony Just, Dennis C. Tiche, Michael J. Tiche, John W. Shaw and Donald L. Connors, defendants herein, wilfully and knowingly did combine, conspire, confederate and agree together with each other and with diverse other persons, to the Grand Jury unknown, to commit the following offense against the United States: To travel in interstate

all in the Commonwealth of Pennsylvania, and New York in the State of New York, to Shelton, Derby, Danbury, and New Haven in the State of Connecticut with the intend to promote, manage, carry on and facilitate the promotion, management and carrying on of an unlawful activity, to wit: the commission of arson in violation of Section 53A-113, Connecticut General Statutes, revised 1958 as amended, and did perform acts to promote, manage, carry on and facilitate the promotion, management and carrying on of such unlawful activity in violation of Title 18 United States Code Section 1952 and 2."

Count one also states, "in furtherance of the conspiracy and to effect the objects
thereof, the defendant did commit, among others
the following overt acts: "And it then lists a
series of alleged overt acts. I won't read them all,
but included in the list are the following: "(g) on
or about February 27, 1975, Dennis C. Tiche, Michael
J. Tiche and John W. Shaw prepared and loaded the
explosives and accelerant aboard the Avis truck
for transportation from Boyers, Pennsylvania to
Shelton, Connecticut.

(1) On or about February 28, 1975,

Dennis C. Tiche, Michael J. Tiche and John W. Shaw travelled from Pittsburgh, Pennsylvania to New York, New York and then to New Haven, Connecticut and thence to Shelton, Connecticut.

- (o) On or about March 1, 1975,

 David Buber arranged and facilitated the delivery

 or gasoline and explosives into Plant 4, Sponge

 Rubber Products Company, Shelton, Connecticut, and
 the entry there into of Dennis C. Tiche, Michael J.

 Tiche and John W. Shaw.
- (p) On or about March 1, 1975,
 David N. Bubar, Dennis C. Tiche, Michael J. Tiche,
 John W. Shaw, Anthony A. Just, Ronald D. Betres
 and Albert R. Coffey were in Plant 4, Sponge Rubber
 Products Company, Shelton, Connecticut.
- (u) On or about March 1, 1975,

 Dennis C. Tiche delivered a sum of money to Michael

 J. Tiche and John W. Shaw."

There are three elements of the conspiracy of the defendants charged in count one, each of which must be proved beyond a reasonable doubt before there can be any conviction on that count.

The first element is that the conspiracy charge in count one was formed in and

existed at or about the time alleged.

Second, that the defendant wilfully became a member of a conspiracy.

Third, the at least one member of the conspiracy knowingly committed at least one of the overt acts, in furtherance of the purposes of the conspiracy.

Now, let me turn to each element of count one in some detail.

The first element concerns the existence of the conspiracy charged in the indictment. A conspiracy is an agreement between two or more persons to accomplish some criminal or unlawful purpose. It is sometimes referred to as a partnership in crime. The agreement is the essence of the conspiracy. The agreement is established if you find that two or more persons in any manner, th ough any contrivance, impliedly or tacitly came to a common understanding to violate the law. Neither expressed language or any particular words are needed to indicate that such an agreement was formed. To establish the existence of the conspiracy, the government is not required to show that two or more persons entered a solumn contract in writing stating that they had formed a conspiracy

and detailing its objective. Indeed, it would be surprising if there were such a formal agreement. Your common sense will tell you that when people combine together in forming a criminal conspiracy, much is left to their unexpressed understanding. From its very nature, a conspiracy is usually secret in its origin and execution.

In determining whether there has been an unlawful agreement, you may consider the acts and conduct of the defendant and of the alleged co-conspirators that are done to carry out the apparent criminal purpose. The adage, "actions speak louder than words" is often applicable. Sometimes the only available evidence is a series of disconnected acts which, when taken together show the existence of the conspiracy.

is a conspiracy to commit the substantive offense charged in count two. That is, a conspiracy to travel in interstate commerce with intent to promote an arson in violation of Connecticut law, and thereafter to commit some act to promote or help to promote that arson.

The fact that a defendant is charged with a substantive offense does not mean that he

may not also be charged with a separate offense of conspiracy to commit that same substantive offense. Whether he is guilty, however, depends upon whether each of the elements of the conspiracy offense has been proved beyond a reasonable doubt. Furthermore, the first element of a conspiracy offense can be established only by proof that the particular conspiracy alleged to be in count one of the indictment is the conspiracy that was established. Proof of some other conspiracy will not suffice.

The second element is whether the defendant wilfully became a member of the conspiracy. If you find that the defendant became a member of the conspiracy, you must be persuaded beyond a reasonable doubt that by his words or conduct or by both he clearly indicated his decision to join the conspiracy with the specific intention of advancing its objectives, and that he wilfully participated in the plan and in some sense promoted the venture himself or made it his own or indicated that he had a stake in the venture.

On this point it is important to bear in mind that a defendant joining of a conspiracy cannot be shown by his mere presence with other members of the conspiracy, even if he has knowledge

that there is a conspiracy being formed or existing. Mere similarity of conduct among various persons and the fact they may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. Guilt by association is foreign to our law andbeing the company of criminals, even if one knows that they are criminal activities, does not make a person a participant in a criminal enterprise. One may join a conspiracy without being assigned any particular role in the conspiracy, and the defendant can be found to have joined the conspiracy even if he does not know all the members of the conspiracy and does not know all of the details of the conspiracy. But there must be proof beyond a reasonable doubt that he knows the objectives of the conspiracy and makes clear his intention to join the conspiracy in order to promote those objectives.

A defendant may be found to have joined a conspiracy after it has initially been formed and if he does join, he is as responsible for the conspiracy as for all acts taken in furtherance as those who joined in the beginning. However, a defendant is not liable for any action taken by

a co-conspirator beyond the scope of the conspiracy he understands he is joining. As I mentioned, the act of joining a conspiracy must be done wilfully. An act is done wilfully if it is done voluntarily and intentionally with a specific intent to do something that the law forbids. That is, with a bad purpose either to disobey or disregard the law.

In deciding whether there was proof beyond a reasonable doubt that the defendant knowingly became a member of the conspiracy, you are entitled to consider all of the evidence in the case, but you should be concerned primarily with his statements and actions. Of course, in deciding whether a defendant's words or actions, demonstrate a wilfull joining of a conspiracy, you are entitled to consider the circumstances then existing that are known to the defendant at the time he makes the statements or does the acts that you find are established. In other words, his acts or words are to be considered in context, not in the abstract.

If you find that a defendant did join a conspiracy, then you can find that he is liable for all of the statements and actions of other members of the conspiracy that are made or taken in furtherance of the objectives of the conspiracy, and he is liable even if these statements were made or these actions were taken in his absence.

In deciding whether defendant knew of the objectives of the conspiracy and intended to promote them, he must be shown to have the same knowledge and the same intent necessary for conviction on the substantive offense charged in count two. In other words, don't think that a person can be convicted on the conspiracy count unless proof of knowledge and intent is required for the substantive interstate travel count. Some people may have the mistaken idea that one can be guilty of conspiracy if he is just vaguely on the fringes of a criminal venture. That is not so. To be guilty of a conspiracy, a defendant must be found to be a knowing and wilfull participant in an agreement to commit the substantive offense, and he must have the same intent required for conviction on a substantive count.

The third element concerns the known commission of at least one overt act in furtherance of a conspiracy. A few moments ago, I read to you from the indictment some of the overt acts alleged

in count one. You can read the others when you have the indictment in the juryroom.

An overt act need not be a criminal or unlawful act in and of itself, but it must be done to effect or promote or assist in the accomplishing a purpose of conspiracy. It is not necessary that an overt act be charged in the indictment against each of the defendants. Neither is it necessary for you to find that all of the alleged overt acts were committed or that an overt act was performed by all or each of the defendants and co-conspirators. This element is established if at least one member of the conspiracy knowingly performs at least one overt act in furtherance of the conspiracy.

in performing your function, one of the most important things that you have to do is to pass upon this matter of credibility. That is, the believability of various witnesses who have appeared before you. In passing on the credibility of each of the witnesses, there are certain considerations you may well have in mind. One of these is the appearance which the witness made when he was on the stand. You should try to size him up. Did he appear to be telling the truth? Did he appear to be

honest? Did he appear to be intelligent? That is, did he appear to be a person who could have observed accurately what he is telling you about, who would be likely to have remembered it accurately and who was capable of reporting it to you accurately?

Another question for you to have in mind regarding each witness is the question as to whether the story he has told you is plausible.

Does it ring true or are there inconsistencies in it? How does it fit in with other evidence in the case which you do believe and other facts you find have existed? Does it jibe with the evidence and those facts? In short, does the testimony which was given by the particular witness whose credibility you are considering seems to be plausible?

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. A prior statement is inconsistent with testimony if it includes something different from the testimony or omits something, and under the circumstances you have expected the omitted matter to be stated if true. The earlier inconsistent statements are generally admissible

only to impeach the credibility of the witness and not to establish truth of the earlier statement.

In determining credibility it is up to you to decide what significance to give to prior inconsistent statements. I further instruct you that if a witness reaffirms in his testimony something he said on a previous occasion, then that previous statement may be considered as fully as testimony in court. You may also bear in mind that if you should find that any witness has been deliberately falsifying on any material point in his testimony, you are privileged to take that fact into consideration in determining whether he has falsified on other points. But simply because you find that a witness has not reported one fact to you accurately, it does not necessarily follow that he is wrong on every other one. A witness may be honestly mistaken on one element of his testimony and be entirely accurate and current on the other points. A witness may even be deliberately falsifying and yet be entirely truthful on all other points. But if you find that a witness has materially lied to you on one particular subject, it is only matural that you should be suspicious of his testimony on all subjects, and under those circumstances, you are

CHARGE TO JURY.

entitled to disbelieve his whole testimony. Whether you do disbelieve it or not, however, lies in your own sound judgment. You have the right to reject testimony even though it is uncontridicted if you feel you have a justifiable reason for doing so.

Another question you may well ask yourselves, in the passing on the credibility of any witness is whether that witness has any bias or interest in the outcome of the case. And if so, whether he has permitted that bias or interest to color his testimony. It, of course, does not follow simply from the fact that a witness has a bias or does have an interest in the outcome of the case that his testimony is to be disbelieved. There are many people, who no matter what their interest in the outcome of the case may be, would not testify falsely. But on the other hand, a jury should always bear in mind that if a witness has a decided bias or has an interest in the outcome of the case, that bias or interest offer something of a temptation to shade his own testimony in accordance with his bias or sway him to advance his own interest, whether that be to gain some advantage for himself or to do damage to another. It may even be that his bias or interest has so operated on

his mind that he has come to believe what he wants to believe and, therefore, he may testify falsely without at the time consciously realizing that his testimony is false. It is therefore obvious that should it appear as regards any witness whose credibility you are testing that he has some bias or some interest in the outcome of the case, that fact is one which you should take into consideration in weighing the testimony. In short, you are to bring to bear upon the credibility of the witnesses, the same consideration, use the same sound judgment you apply to questions of truth and veracity which are daily presenting themselves for your decision in the ordinary affairs of life.

Accomplice in the prosecution of crime: The Government is often called upon to use witnesses who are accomplices in the commission of the crime itself. This is particularly so in the case of conspiracy. Conspirators do not publicly proclaim their intention to operate openly. It often happens that only members of a conspiracy have evidence which is relevant to and important in the case. However, experience has shown that accomplices may be motivated to place the responsibility on others than themselves. Accordingly, in accomplice's

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testimony should be closely examined, weighed with care, checked with the facts which you find to exist in this case and against the evidence which may corroborate it, then you should give the testimony such value or weight as you doem important under the circumstances. An accomplice's testimony by itself may be sufficient to convict if, but only if it convinces you of the defendant's guilt beyond any reasonable doubt. It is, of course, proper for you to consider the interest which a witness has in the outcome of a case, whether that witness be a defendant himself, a government witness or a defense witness. But in determining the credibility of a witness's interest in the outcome of the case, it is certainly a ratter you are entitled to take into consideration. I do not mean to suggest that a witness who has an interest in the outcome of the case may not be telling the truth in spite of his interest, but you may consider that factor in determining what weight to give his testimony.

Let me add some further considerations you should bear in mind in considering the credibility of the witness, John Shaw. In the first place, Shaw had admitted his participation in the criminal venture that resulted in the

destruction of the plant. By his own admission, he is an accomplice of perpetrators of the crimes charged in this indictment. Of course, his pleas of guilty in this case are not ev'dence of the guilt of any defendant in this case. Those pleas may be considered only to the extent that they may affect Shaw's credibility. I instruct you that the testimony of an accomplice should be weighed, as I have said, with caution and great care and it should be considered with greater scrutiny than the testimony of other witnesses. Moreover, Shaw had acknowledged that he has received certain benefits in return for his decision to cooperate with the authorities and testify. He was allowed to plead to only two of the counts with which he was originally charged and the remaining counts were dismissed. Furthermore, he has been sentenced to five years on those two counts, and he understands that such sentence in the state case that grew out of this episode and the sentence in the Federal case in Pennsylvania arriving out of a previous arson episode is to be concurrent with this sentence. Further, he understands there will be no state prosecution in Pennsylvania arising out of the prior arson. He also acknowledged that he had received

some cash payments from the Government for food and living expenses between April and August. You should also keep in mind that his attorney made a motion to amend his sentence, which has been denied. In such circumstances, you should realize that there is always the risk that an accomplice may shave his testimony or embellish it in ways that he thinks will be helpful to the prosecution. He may not do so deliberately, or he may do so unintentionally, trying honestly to recall what happened, but reporting events or conversations to you with variations that he has come to believe are true. You should have these considerations in mind as you consider Shaw's credibility. They reinforce what I earlier told you about weighing the testimony of an accomplice with caution and great care. However I am not suggesting that you are not entitled to accept the testimony of an accomplice even when he has received or hopes to meceive substantial benefits. Sometimes the testimony of an accomplice is accurate as to most, and on occasion, all details, and it may be the only evidence available to establish certain facts.

You are entitled to rely on Shaw's testimony whether or not it is corroborated, but you

should bear in mind what I have said in deciding how much weight to give his testimony. You are free to credit none of it, some of it or all of it.

contention that the testimony of the witness Shaw should not be believed because his testimony was colored by his hopes of gain and beneficial treatment by the Government, because his testimony, claims the defendant was part of a deal for lenient treatment for himself, because he has been shown to be untruth on other occasions, because he has been convicted of several crimes, because of his bad character and because of other reasons. It is further the defense's contention that if you do reject Shaw's testimony, there is not enough other independent testimony on which he can be convicted of any of the counts in the indictment.

Expert testimony: You will recall that the Government offered the testimony of a handwriting examiner and a fingerprint examiner.

Witnesses who by their education and experience, have become expert in some art, science, profession or calling, may state an opinion as to relevant and material matters in which they profess to be experts, and they also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case and give it such weight you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient educational experience, or if you should conclude that the reasons given in support of an opinion are not sound or that the opinion is out-weighed by other evidence, you may disregard the opinion entirely. Furthermore, I instruct you that an opinion of an expert witness can be rejected even if it is not contradicted by other evidence.

You are entitled to look at the exhibits concerning the handwriting and fingerprint comparisons and make up your own minds on that issue.

In considering the testimony of the Government experts and witnesses or government agents, you should bear in mind that their testimony is entitled to no greater significance simply because they are employees of the government. Their testimony should be subject to the same considerations you apply to any witness regardless of their employment by the Government.

Now, the defendant's failure to take the stand: The law does not compel a defendant to take the witness stand to testify, and no unfavorable

inference of any sort may be drawn from the fact that a defendant chooses not to testify. You must not permit such a fact to weigh in the slightest degree against the defendant, nor should it enter into your discussions or deliberations. A defendant is not required to establish his innocence. He need not produce any evidence whatsoever if he does not choose to do so, and there cannot be any adverse inference drawn from the defendant's failure to produce evidence. As I have indicated, the burden is on the Government to prove a defendant guilty beyond a reasonable doubt. If it fails, the defense has the right to rely on that failure and if right, must be acquitted.

Hearsay: Most of the evidence in this case is testimony from witnesses who took an oath to tell the truth and were subject to cross-examination. However, under the rules of evidence, there was also permitted into evidence certain statements that are called hearsay. Hearsay is a statement of some assertion that was made out of court by someone and is offered in evidence to prove that the assertion is true. The assertion may be presented in a written document or in another witness's testimony. You should note that

such evidence, although admissible in some circumstances, should be viewed carefully. You should note that such out of court statements were not, of course, made under oath, thus, the person making the statement is not subject to the penalties for perjury. You should also note that you have had no opportunity to observe the demeanor of the person who made the statement while he was making it as you ave had with the other witnesses who have testified here. It is possible that the witness who related hearing this statement may have heard or reported it inaccurately. Lastly, you should bear in mind that the defense counsel has had no opportunity to cross examine the person who supposedly made the hearsay statements, and that cross-examination is an integral part of our search for the truth.

evidence to show that at a significant time he was at a place other than that at which the Government contends that he was. This defense is calle an alibi.

Now, an alibi is an entirely legal and proper defense. It simply means that a defendant was at a location different from the location indicated by the Government's evidence.

Moreover, there is no burden on the defendant to establish his alibi. The burden of truth always remains on the Government to establish the defendant's guilt. But you should consider the alibi evidence in deciding whether a reasonable doubt exists as to a defendant's guilt on each of the crimes charged. If his alibi evidence, weighed with all the other evidence, in this case, leaves you with a reasonable doubt about his guilt, then you should acquit him.

I have now explained to you what you must find in order to convict this defendant of the crimes charged in the indictment. Before you go out to begin your deliberations, there are a few general things that I want to explain to you.

evidence is of two types, direct
evidence and circumstantial evidence. Direct
evidence is where a witness testified to what he
saw, heard, observed what he knows of his own knowledge
or something that comes to him by virtue of his
senses.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the experience of mankind. Circumstantial evidence is

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that evidence which seems to prove a disputed fact by proof of other facts, which have a logical tendency to lead the mind to a conclusion that those facts exist which are sought to be established.

Circumstantial evidence, if believed is no less valuable than direct evidence, because in either case you must be conviced beyond a reasonable doubt of the guilt of the defendant. Let us take one simple example one often uses to illustrate what is meant by circumstantial evidence. We will assume that when you entered the courthouse this morning the sun was shining brightly outside and it was a clear day, there was no rain and the sky was clear. Assume that in this courtroom the blinds were drawn and the drapes were drawn so that you could not look outside. Assume that you were sitting in the jury box, and despite the fact that it was dry when you entered the building, somebody walked in with an umbrella dripping water and is followed in a short while by a man with a raincoat which is wet. Now, on our assumptions, you cannot look out of the courtroom and see whether it is raining or not, and if you were asked, is it raining, you cannot say you know it directly or from your own observation, but certainly upon the combination

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of facts, and given that when you entered the building it was not raining outside, it would be reasonable and logical for you to conclude that it is now raining outside. That is about all there is to circumstantial evidence. You infer on the basis of reason and experience from an established fact the existence of some further fact. There are times, when different inferences may be drawn from facts, whether they are proved by direct or circumstantial evidence. The Government asked you to draw one set of inferences while the defendant asked for you to draw another. It is for you to decide and for you alone what inference you will draw.

Now, during the course of this case there has been reference to an earlier trial. I instruct you that that fact is not to be considered by you in your deliberations, nor is the fate of the other defendants made in the indictment, excepting, of course, as it effects the credibility of John Shaw who was the Government's principal witness here.

In conclusion, the purpose of your deliberations is to exchange views with your fellow jurors, to discuss and consider the evidence, to listen to each other's arguments, to present your

own views and to reach a unanimous verdict based solely and wholly on the evidence, if you can do so, without violation to your own individual conscience and judgment. Each of you must decide the case for yourselves but do so only after impartial consideration of the evidence in the case with your fellow jurors. Do not heartate to re-examine your own views and to change your minds when after a discussion, it appears to be in error. But if after carefully weighing all the evidence in this case and the argument of your fellow jurors, you hold a conscientious view which differs from the others, you are not to yield your view simply because you are outnumbered. Your final vote must reflect your objective and deeply thought out determination of the issues.

If, in the course of your deliberations, you desire any portion of the testimony to be read back, you may send in a note to the court asking for whatever will clear up any of the questions that you may have. However, I must ask you that when you have a question that you be very specific about the question that you do have so that we can find it more easily in the testimony which has been given.

In communicating with the court,

I should remind you that you should never indicate
how your vote may be divided. The reason for that
is simple. Your deliberations are secret, and it
would be a breach of that secrecy to indicate how
the jury has voted at any time except to announce
that you have reached a unanimous verdict.

In the event your members cannot agree unanimously upon a verdict after deliberations, do not indicate to anyone, including the court, how the jury has voted or why you cannot agree unanimously upon a verdict. Merely indicate that you consider yourselves to be deadlocked. If I should ask you any questions in court during the course of your deliberations, pause before you answer and carefully consider my question. If the answer calls for a Yes or No or maybe reply, give only the reply to my question and do not volunteer any additional statements. In any event, do not say any more than is necessary to inform me of your answer.

When you indicate that you have reached a verdict, do not indicate what your verdict is. You will be asked to state that orally through your forelady in open court.

I will conclude by simply saying

your oath sums up your duty. That is, without fear or favor to anyone you will well and truthfully try the issues between the defendant and the Government of the United States based solely on the evidence which has been introduced in court and the court's instructions as to the law. Remember, you must consider each count and make a decision with respect to each count. Your verdict, whether it be guilty or not guilty, must be unanimous. This case is important to the Government and it is important to the defendant. Give it your careful consideration. Gentleman, side bar.

(The following was an on the record discussion at the bench.)

THE COURT: Any objections or exceptions.

MR. QUINLAN: I have no exceptions,
no objections to your Honor's charge. I wish to state
I consider the charge to be extremely fair.

MR. DOW: I have one item to note and that was, when Your Honor was speaking about bias or interest. You referred to the pronoun "his" at these dates and times. Apparently, that doesn't cover both he and she, the male and the female, and since there was a female witness presented --

CHARGE TO JURY. _

THE COURT: I will simply state to the Jury that when I said his, I also include hers.

MR. QUINLAN: But not in the context.

THE COURT: No. And, of course, I

have given them the charge.

MR. DOW: Now, the other thing
Your Honor mentioned at the end, but I am not sure.
Did Your Honor indicate that they are to return a
separate verdict on each count?

THE COURT: Yes.

MR. DOW: You might have said it at the end.

THE COURT: I said that you must consider each count and make a decision with respect to each count.

MR. DOW: I just wanted to make sure.

(Proceedings back in open court before the Jury.)

THE COURT: Ladies and Gentlemen of the Jury, in the charge where I have said his, it may also be read as hers. I don't want anybody to take umbrage at the fact that I have used the word his.

Now, Mr. Clerk, will you please

76 - CR - 44

JUNE 14 3:10 PM.

COURT EXHIBIT #1

Ms Rokeberry testimony on Feb 27. 6/14/16 310 pm Ct. Ex.#1

John Shaw's testimony to Raticipants and time of loading Jas Feb. 27

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76- CR-44

Jane. 14 4:40 Pm

Court Exhibit # 2

There is no chance of our reaching any agreement within several hours. 440 p.711.

76. CR-44

June 14 10:10 6m.

Court Ex hilit #3

The jurous are getting tired and would like to go home for the night

N. S. A. VS TICHE 76 CR. 44

June 14 10:10 Pm.

Court Ex # 4

FEB 28, 1975 Exhibity

READ TESTIMONY

OF HANDWRITING

EXPERT AND DEFENSE

ATTORNEY'S REMARK AT

THE END OF THIS

TESTIMONY.

N.S.A. VS TICHE 76-CR-44 Court Ex. #5

June 14

. Feb a 8, 1975 READ TRAFFIC MANAGER TESTIMONY ABOUT COMPANY Ex 5,00

76-CR-44 June 16

Court Exhibit # 6

the jury cannot reach an agreement on any of the counts & 1/2 AM #6 John Tully, Foreman

71. S. A. VS TICHE.

June 16 3:15-Bm

Court Exhibit # 7

Tohns testimony At the Plant concerning where and who emptied the Company Car MARCH 1 6/16/76

U. SA. VS TICHE 76-CV-44

3:15-Pm

Court Exhibit #8

Could we have Johns
testimony. At the 2nd
thoward Johnsons Concerning
the exchange of medicinal
and who got in which
are which I 35 # 5 6/16/16

21. S.A. VS TIEHE 76-CV-44

June 16 4:50 Pm.

Court. Exhibit # 9

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76-CR-44

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Court Exhibit # 10

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His reply as to why

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71.5.A. VS TICHE 76-CR-44 JUNE 17 4:05 Pm

Court Exhibit # 11

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76-CR-44

10:20 a.m.

Court Extilit # 12

On page 15
line 20
line 20
loes "a building"
specifically mean Blant
4 - Conol St - Shelten
Com.

we don't know if "a building" specifically means Plant 4.

76. CR. 44

June 18

Court Ex # 13

We have reached a #3
verdict

130 pm Jhn Tully

6/8/16.

swear the Marshals.

(Whereupon the Marshals were sworn).

THE COURT: The alternate jurors

at this time, since I have completed my large and

the matter has gone to the Jury, you will be

excused with the thanks of the Court and the

thanks of counsel for your attention and dedication

in the matter. Thank you very much.

THE CLERK: The Jury is at this time excused. You may retire for your deliberations.

THE COURT: All of the exhibits are to be delivered to the Jury along with the charge of the court and the indictment after they have completed their lunch.

(Jury retires for deliberations).

(Note from Jury).

(The following proceedings were held in the courtroom without the presence of the Jury).

"Ms. Roxberry's testimony on February 27th. John
Shaw's testimony to participants at time of loading
gas February 27th."

Now, what I propose to do, the way which I will handle this is to let the Court Reporter

read to you the testimony and then see whether there is anything else that you want or anything else that you think should be included in, and then we will call the Jury in and have it read.

(Portion of testimony to be read of to the Jury was first read to Counsel).

THE COURT: We have discussed the question of whether there was cross-examination with respect to the gas loading, and that our recollection is, that Counsel and the Court, that there was no cross-examination with respect to the gas loading question. And I have denied the prosecution's request to read anything else other than what the Jury requested. That is to say, with respect to the loading of the gas and the participation of Michael as reflected in John Shaw's testimony.

PROCEEDINGS AS JURY DELIBERATED. - 87

(Jury enters at 4:05 p.m. and the reporter read back the testimony of Delberta Roxberry from page 715, line 4, through page 719, line 4.)

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(The reporter read back the testimony of Delberta Roxberry from page 719, line 22, through page 720, line 19.)

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(The reporter read back the testimony of Delberta Roxberry from page 724, line 13, through page 724, line 20.)

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(The reporter read back the testimony of John Shaw from page 177, line 22, through page 178, line 14.)

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(The reporter read back the testimony of John Shaw from page 179, line 5, through page 185, line 8.)

* * * * *

THE COURT: All right, ladies and gentlemen, you may resume your deliberations.

(Proceedings in courtroom without the presence of the jury.)

THE COURT: I received a note from the jury at 4:40 saying that, "There is no chance of our reaching any agreement within several hours."

So my plans are to send them to dinner at 6:15 and send you to dinner at 6:15, expecting that you will return within two hours, namely, 8:15. In the meantime, I am going to have the jury come in and permit them to write notes to that the marshal may make the necessary teleph ne calls for whatever arrangements they may have. I am also going to indicate to them that I will keep them for several hours. And this is Court's Exhibit No. 2. So if you will get the jury in.

(Jury enters courtroom.)

made plans to see that you get some dinner at 6:15.

That means you will stop deliberating around 6 and be taken over to Jack's for dinner and to return not later than 8:15. I plan to keep you for several hours this evening. I would say that any e who has to make a telephone call may write out the message and the marshal will make the telephone call for you. And that is about where it is at the moment. And, of course, I in no way want to restrict your deliberations in this matter. If anyone, during

the course of the evening, feels that they are too fatigued to go on, please have your forelady write a note to me and we will resume deliberations in the morning. Obviously, I don't want anyone to get ill as a result of sitting on this jury. But within reason, please, ladies and gentlemen, because this, as I said to you earlier, is important to the defendant and it is important to the Government.

All right, you may resume your deliberations.

(Jury resumes deliberations at 5 p.m.)

(Proceedings in courtroom without the presence of the jury at 10 p.m.)

THE COURT: The jurors have informed me that they are getting tired and would like to go home for the night, and I see no reason for not letting them go home at this hour. At least one of them, the marshal informs me, has to go to Cobleskill which is better than 40 miles away, so I think we better call it off for tonight and reassemble at 10 o'clock tomorrow morning.

If you will get the jurors in, please.

(Jury enters courtroom at 10:08 p.m.)

THE COURT: All right. We will look
into these two requests the first thing romorrow

morning. I am going to let you go home at this hour and reconvene at 10 o'clock tomorrow morning. Again, as I instructed you, your proceedings in the jury room are secret, and consequently, on your journey home or when you get home or on your journey in tomorrow morning, nothing that has gone on in that jury room should be discussed with anyone. The same admonition as I have given you all along. This matter is not to be discussed by you. It is in your hands at this point. It is not to be discussed by you with anyone excepting in that jury room, and if anybody attempts to discuss it with you, you are to inform the Court. We will reconvene at 10 o'clock tomorrow morning. Good night and take your time going home.

(Jury leaves courtroom and further proceedings cook place as follows:)

THE COURT: I don't know what this

means, but I have received one note which says,

"February 28th, 1975, read testimony of handwriting

expert and defense attorney's remark at the end of

his testimony."

Now, that is a pretty broad scope, and I intend to question them about that in the morning. But I didn't think tonight is the appropriate time to do it. And the other one is, "Read traffic

manager's testimony about the company car."

Well, that is fairly short and simple, so we'll read that.

MR. QUINN: Could I get the first note again?

THE COURT: "Read testimony of handwriting expert and defense attorney's remark at the end of his testimony."

In the first instance, I am not going to have all of it read back of the handwriting expert, but we will try and locate the essential part of it and your comment at the end of the testimony, which I presume means that you concede that something was identifiable but the other was questionable.

Right?

MR. DOW: As I recall, Mr.Quinlan asked the agent, "Would it surprise you to learn that I agree with what you are saying?" Something of that sort.

MR. QUINAN: Yes.

THE COURT: Something of that sort.

So I will turn these over as Exhibit 3 received at 10:10, and Exhibit 5 at 10:10.

(Whereupon, the proceedings were adjourned.)

JUNE 15th, 1976

(Jury enters courtroom at 10:25 a.m.)

THE COURT: Good morning. We are happy to see that you are all here this morning. We will read the notes with respect to Mr. Gillham first.

He was the handwriting expert.

(The reporter read back the entire testimony of Bobby R. Gillham from page 678, line 9, through page 690, line 6.)

* * * * * *

(The reporter read back the entire testimony of Casper Tucci from page 448, line 4, through page 452, line 24.)

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THE COURT: Ladies and gentlemen, we read all the testimony of both those witnesses.

I am going to let you go back and resume your deliberations. But if you have any more questions, please be more specific as to what you want read because we can't reread all of the testimony in the trial, and it is at the discretion of the Court as to whether any of it shall be reread. So be specific if you do have any questions. All right. You may resume your deliberations.

(Jury resumes deliberations.)

(The following proceedings took place in the courtroom without the presence of the jury.)

THE COURT: I have decided that this has been a fairly long day for the jury, and I decided that we are going to call it quits at this time and reconvene at 10 o'clock tomorrow morning.

I know, Mr. Quinlan, you have a problem, but we will await your arrival. The jury will reconvene at 10 c'clock, and presumably, there won't be anything, and if there is, we will just hold it until you come.

MR. QUINLAN: I shouldn't be very much later than 10 anyway.

THE COURT: All right. Would you get the jury in, please.

(Jury enters courtroom at 5 p.m.)

THE COURT: Ladies and gentlemen of the jury, I decided that it is about time to quit for the day, so I'm going to dismiss you until tomorrow morning at 10 o'clock. I don't want to subject you to another night ride. And it is fairly warm, and I suppose we will have another thunderstorm before all of us get home. So I would suggest and direct you again that all of your deliberations is secret.

Don't discuss the matter with anyone while you are at

home or on your way home, even if two of you are riding together in a car, don't discuss the matter. Discuss something else. If anyone tries to discuss it with you, tell him you are on the jury and you cannot discuss it. If the persist, you report it to the Court. We will see you at 10 o'clock tomorrow morning.

(Proceedings were adjourned.)

JUNE 16th, 1976

(The following proceedings took place in the courtroom without the jury at 11:10 a.m.)

THE COURT: I have received a note from the jury as follows: "We, the members of the jury, cannot reach an agreement on any of the counts."

MR. QUINLAN: Pardon?

of any of the counts. Now, what I propose to do, gentlemen, is to have them sit a little longer, and I am going to give them the Allen charge in a modified form.

MR. QUINLAN: I would object to that.

THE COURT: I understand that.

MR. QUINLAN: And may I be heard briefly in connection with my objection?

THE COURT: No.

MR. QUINLAN: It will only be brief, and I just want to cite two things that I think the Second Circuit said in this situation.

THE COURT: Go ahead.

MR. QUINLAN: And I would like to make a record, if it please the Court.

THE COURT: All right.

MR. QUINLAN: The Second Circuit said

in United States against Goldstein, 479 F 2d, page 1068 that the appropriate factors to consider are -- and they give two, the scope of disagreement among the jurors to determine whether further deliberations might produce some agreement. And I think the modified Allen charge goes further than that. Also, in United States against Bergerman 516 F 2d, 905 last year, the Second Gircuit said that the rejection or the declining of the trial judge to give the Allen charge or modified Allen charge there was proper and it imported an awareness of the danger of coercing an erroneous verdict.

I am not going to go on, but I think this jury has had this case since Monday at 1 p.m. in the afternoon. They deliberated until 10.

THE COURT: That is not quite true.

It was quarter to 2 when I finished my charge, and then they had lunch. So I assume since 3 o'clock.

MR. QUINLAN: Even accepting the modification, they have been sitting quite a bit, and now it is after 11 o'clock Wednesday morning, and I submit that if they say, after all their deliberations, that they can't reach agreement, then it ought to be left at that to them, and I would object to any Allen charge or modified Allen charge,

with all respect.

THE COURT: All right, understood.

Your record is made. In the opinion of the Court,
a very important thing here is that the defendant
is entitled, in my opinion, to a verdict one way or
the another. And I can assure you gentlemen that I
have no interest in which way that verdict may be.

MR. QUINLAN: I know that.

THE COURT: But he has been through two trials, and in my opinion, he is entitled to a verdict.

MR. QUINLAN: Speaking as the defendant' lawyer, I say the defendant would be and is satisfied with it as it is now.

Is that correct, Mr. Tiche?

THE DEFENDANT: Yes, that's right.

THE COURT: All right. Get the jury

in.

(Jury enters at 11:25 a.m.)

THE COURT: Now, ladies and gentlemen,

I have received your note which has indicated that
you have concluded your deliberations and have been
unable to reach a unanimous decision with respect
to any of the charges. I, however, wish to instruct
you further in this connection and ask you if you

will bear with me for a few minutes. I just called you back because I wish to suggest a few thoughts which you may desire to consider in further deliberations along with all of the evidence in the case and all of the instructions which I have previously given to you.

This is an important case. If you should fail to agree upon a verdict, the case is left open and undecided. Like all cases, it must be disposed of at some time. There is no reason to believe that the case can be tried again by either side more competently or more exhaustively than it has been tried before you. Any future jury must be selected in the same manner and from the same source as you have been chosen, so there appears to be no reason to believe that the case would ever be submitted to 12 men and women more conscientious or more competent to decide it, or that more or clearer evidence could be produced on behalf of either side. Of course, these things suggest hemselves upon brief reflection to all of us who have sat through the trial. The only reason they are mentioned now is because some of them may have escaped your attention which must have been fully occupied up to this time in reviewing the evidence in the case. They are matters

which, along with others and perhaps more obvious ones, remind us how desirable it is that you unanimously agree upon a verdict.

As I stated in the instructions given at the time the case was submitted to you for decision you should not surrender your honest convictions as to the weight and effect of evidence solely because of opinion of other jurors or for the purpose of returning a verdict. However, it is your duty as jurors to consult with one another and to deliberate with a view to reaching agreement, if you can do so without doing violation to individual conscience. Each of you must decide the case for yourselves. But you should do so only after consideration of the evidence in the case with your fellow jurors. And in the course of your deliberations, you should not hesitate to reexamine your own views and change your opinion if you are convinced indeed that it is erroneous. In other words, to bring 12 minds to a unanimous result, you must examine the questions submitted to you with candor and frankness and with proper deference to and regard for the opinions of each other. That is to say, in conferring together, each of you should pay due attention to and respect the view of the others and listen to each other's

arguments with a disposition to reexamine your own views. If a majority or even a lesser of you are for acquittal, the other jurors ought seriously ask themselves again most thoughtfully whether they do not have reason to doubt the correctness of a judgment which is not concurred in by many of their fellow jurors, and whether they should not distrust the weight and sufficiency of the evidence which fails to convince the minds of several of their fellows beyond a reasonable doubt.

On the other hand, if a greater number of you are for conviction, each dissenting juror ought to consider whether a doubt in his or her mind is a reasonable one since it makes no effective impression upon the minds of so many equally honest, equally conscientious fellow jurors who bear the same responsibility, serve under the same oath and have heard the same evidence, we may assume, the same intention, and the equal desire to arrive at the truth. Ou are not partisans, you are judges, judges of the facts. Your sole interest here is to seek the truth from the evidence in the case. You are the exclusive judges of the credibility of all the witnesses and of the weight and effect of all of the testimony. In the performance of this high duty,

practicable, the law imposes the burden of proof on one party or the other in all cases. In the present case the burden of proof is on the Government.

Above all, constantly keep in mind that unless your final conscientious appraisal in the case clearly requires it, the accused should never be disposed at the risk of having to run at another time, the gauntles of a criminal prosecution and to endure another time, the mental and emotional strain of a criminal trial.

You may conduct your deliberations as you choose, but I suggest that you now carefully

reexamine and reconsider all of the evidence of the case bearing on the questions before you.

I would also like to add that, in case you have forgotten during your deliberations, that the matter of sentence is in no way to be considered by you and may not be discussed by you in the jury room. The matter of sentence is for the conscience of the Court if, as and when a verdict of guilty is rendered.

I am going to ask you to go back once more, retire and continue your deliberations.

(Jury retires to continue deliberations.

MR. QUINLAN: Your Honor, I don't think
it is necessary for me to repeat my objections that
I have.

THE COURT: Your objection is noted on the record.

MR. QUINLAN: I would just like to have an idea, for my own peace of mind, without, of course, in any way binding on the Court, roughly how long you will let them go.

THE COURT: We will certainly not go beyond 5 o'clock.

MR. QUINLAN: All right.

THE COURT: All right, gentlemen

will be in recess. Incidentally, I would suggest that you take orders for lunch, and I am going to be going to lunch from 12:30 to approximately 2 o'clock.

(The following proceedings took place in the courtroom without the presence of the jury at 3:30 p.m.)

THE COURT: We have two notes: "Could we have John's testimony at the second Howard Johnson's concerning the exchange of material and who got in whose car." Also, "Could we have John's testimony at the plant concerning where and who emptied the company car."

Why don't we read them to counsel.

(The pending testimony to be read to the jury was first read to counsel.)

any recollection with respect to either of these?

MR. QUINLAN: Let me think a moment
on that. I don't think I cross-examined on that
subject.

THE COURT: I don't think so either.

MR. DOW: My recollection is the same
as Mr. Quinlan's. I don't think chat subject was
hit on cross-examination.

THE COURT: I don't think so either.

(Jury enters at 3:35 p.m.)

(The reporter read back the testimony of John Shaw from page 212, line 6, through page 214, line 21.)

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(The reporter read back the testimony of John Shaw from page 216, line 18, through page 216, line 23.)

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(The reporter read back the testimony of John Shaw from page 229, line 12, through page 230, line 3.)

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THE COURT: All right. That is the sum total of the testimony that you have asked for, so we will let you return to your deliberations.

JUROR NO. 8: There is a man here who didn't hear your charges before and would like them to be repeated. He is a little hard of hearing.

THE COURT: Unfortunately, I can't repeat that charge for the simple reason that I don't have it verbatim, that is the difficulty.

JUROR NO. 8: Okay.

(Jury retires to continue deliberations.

PROCEEDINGS AS JURY DELIBERATED. -

MR. QUINLAN: May I have a minute to collect myself a bit?

THE COURT: Yes, sure.

MR. QUINLAN: I think in view of the juror who spoke a request to have the charge, which I gather being the modified Allen charge read, I think the court reporter could read it, and I would move that that be done.

THE COURT: Do you have any objection, Mr. Dow?

MR. DOW: To the modified Allen charge being reread, no, I don't think so, your Honor.

MR. QUINLAN: I would like to consult with the defendant himself.

THE COURT: Sure.

MR. QUINLAN: I withdraw the request.

THE COURT: All right.

MR. QUINLAN: I'm sorry to vacillate,

but --

THE COURT: All right, that is understandable.

Now, on the record, in view of the fact that they are still asking questions, it would be my intention to hold them until 5 and return them tomorrow morning unless they come in with a verdict

before that time. There is, obviously, discussion going on.

MR. QUINLAN: I would like to reserve my motion on that until 5.

MR. DOW: The Government, in fact, was going to request that before they came in this last time. In view of their note, it does appear that they are pursuing further discussions of the matter and it looks like there's a possibility of a verdict.

THE COURT: Yes, all right. We'll be in recess until we get some other requests.

(Recess.)

(The following proceedings took place in the courtroom without the presence of the jury.)

THE COURT: I just received two requests from the jury:

"John's testimony regarding the telephone --'
I can't read the word -- "on February 25th."

MR. DOW: 25th?

THE COURT: Yes. It looks like February

25th. And, "Testimony of John's regarding their

arrival at LaGuardia, exchange of moneys and telling

them their destination."

In view of the hour, my feeling on this

is that I will send them home to eight and read it to them in the morning, because the time has gone by and they have been sitting long enough. But I think, again, that this is an indication that they are working on it.

Why don't we get the jury in, Mr. Marshal.

(Jury enters courtroom at 5 p.m.)

THE COURT: Ladies and gentlemen of the jury, I have received your note regarding this testimony, but in view of the hour and the fact that experience has taught us that it takes us some while to find the testimony in the court record, I am going to dismiss you for this evening and ask you to report back at 10 o'clock tomorrow morning.

Mr. Foreman, may I have the word on the first request, "John's testimony regarding the telephone --"? Is it comment?

JUROR: Contents.

THE COURT: All right. There is no
"s" on it and I didn't know what it was. Contents,
fine. Again, my admonition as to your secrecy.

Please don't discuss it until you get back in the
jury room tomorrow morning. Have a good evening.

(Jury leaves courtroom.)

PROCEEDINGS AS JURY DELIBERATED.

MR. QUINLAN: Your Honor, I just have a personal matter, if I can think out loud about -THE COURT: Off the record or on the

record?

MR. QUINLAN: We can do it off the

record.

THE COURT: Off the record.

(Discussion off the record.)

(Proceedings were adjourned for the day.)

JUNE 17th, 1976

(John Shaw's testimony to be read to the jury was first read to counsel.)

MR. QUINLAN: I would object to some of the questions and answers that were read that exceeded the scope of what the note asked for. I don't object to the statement at the airport to the effect that Michael, Dennis and John were there and that Betres came and walked out of the sight of Michael and John. Then there was a part I would object to where the question was who was Betres, and the answer described something about Betres. I don't think that was responsive.

THE COURT: I think it is responsive.

MR. QUINLAN: Could I state my objection on the record?

THE COURT: Yes.

MR. QUINLAN: Your Honor, the reporter has read, really, from the beginning to end as far as the airport in New York, more than, I think, the note calls for. There is conversation about, for example, who Betres was, was that the man who did something, and there was an answer about that that I object to. In addition, there are further non-responsive elements in the question and I submit that

the questions and answers read shoul be limited to what the jury asked for. Your Monor told the jury on a couple of occasions to be specific, and I submit they were specific and they are getting more than what they asked for, and I object on that ground. And I urge my objection because this is a very delicate point of the whole situation right now.

MR. DOW: I disagree with Mr. Quinlan.

I think what the reporter read back was responsive, and certainly was within the context of the events that they have asked about. That is basically what happened at LaGuardia Airport, the exchange of money and discussions of destination. I think that his reading of the transcript was entirely responsive to the question by the jury.

THE COURT: I am going to overrule the objection. I think that the identification of the person is part and parcel of the conversation, and the identification of Betres is a part of what was transacted at LaGuardia. So that I think that the reading is correct.

(Jury enters courtroom at 10:10 a.m.)

THE COURT: Good morning, ladies and
gentlemen. We think we have found the sections you
have asked us to read.

Mr. Horan, would you read back the questions.

THE CLERK: Courtroom Exhibit No. 9.

First question asked was "John's testimony regarding telephone contents of February 25th." Two, "Testimony of John's regarding their arrival at LaGuardia, exchange of moneys and telling them their destination."

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(The reporter read back the testimony of John Shaw from page 172, line 23, through page 173, line 21.)

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(The reporter read back the testimony of John Shaw from page 202, line 21, through page 204, line 9.)

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(The reporter read back the testimony of John Shaw from page 204, line 15, through page 204, line 25.)

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THE COURT: Those are the portions of the testimony that I think you have requested. We will now let you return to your deliberations.

(Jury resumes deliberations at 10:16 a.m.

PROCEEDINGS AS JURY DELIBERATED.

(Proceedings in court at 11:30 a.m. without the presence of the jury.)

THE COURT: I received a note from
the jury: "John's testimony, his reply as to why
he signed his own name when he registered at the
hotel and their conversation in the hotel room."
All of which we have, although there doesn't seem
to be any testimony as to why he signed his own name,
just simply that he signed his own name.

(The testimony to be read to the jury was first read to counsel.)

MR. DOW: There was some discussion about the distribution of cash.

THE COURT: But that is not discussion.

MR. DOW: I would consent to the reading

MR. QUINLAN: I would not.

THE COURT: I would not either. I don't think it is a matter of discussion.

of that.

(Jury enters courtroom.)

THE COURT: All right, Mr. Reporter, will you read the answers to the question that we have.

(The reporter read back the testimony of John Shaw from page 205, line 17, through page

205 line 20.)

(The reporter read back the testimony of John Shaw from page 207, line 7, through page 207, line 15.)

THE COURT: That is the total. Is there a question that you have in addition to that that you wanted?

JUROR NO. 7: I thought there was more testimony on his name.

JUROR NO. 6: Was there a question as to why he signed his own name?

THE COURT: There was no such question. We examined the testimony and found no such question or any answer.

(Jury resumes deliberations at 11:40 a.m.) (The following proceedings took place in the courtroom at 4:05 p.m. without the presence of the jury.)

THE COURT: I just had another note: "Does count three mean that the interstate transportation of explosives had to go to a specific place, that is, Plant 4, or at the time prior to the transportation could the specific destination have been

unknown?"

I guess it means unknown. It says unknown. But I think that the charge is complete and sufficient with respect to this instruction, and consequently, I am simply going to refer them to that count in the charge. I don't think it requires any further explanation.

MR. QUINLAN: That is fine with the defense, your Honor.

MR. DOW: Does your Honor have a copy of the charge?

THE COURT: No, I don't have a copy of the charge. I gave them my copy.

MR. QUINLAN: I recall the charge, and it was quite specific.

THE COURT: I think it was specific on this point, and I don't see any reason for rereading it.

So if you will get the jury in, we will inform them.

(Jury enters courtroca.)

THE COURT: Now, ladies and gentlemen,

I have your latest note. And although I do not have
a copy of the charge, you have the only copy of the
charge, I do have my notes which I used in preparing

that charge, and in my opinion, the charge is quite specific on this point, on these points that you have raised. And if you will consult the charge with respect to count three, you will see that we have specifically mentioned each of the questions that you have raised here. So I think you ought to consult that, and then if you have some other question around this point that you feel that the charge does not cover, come back and we will see whether we can answer it. But I am not going to reread it for you since you have it in the jury room and your foreman can read it to you.

(Jury resumes deliberations.)

MR. QUINLAN: Your Honor, it is now

4:15, and my request would be that if the jury has
not returned a verdict by 5 p.m. that the Court make
an inquiry of them of the scope of disagreement among
the jurors or to determine whether further deliberations might produce some agreement, which are the
standards, I believe, that were set forth by the
Second Circuit in the United States against Goldstein,
479 F 2d at 468, and also which apparently rely upon
any second circuit opinion upon the ABA mirical
standards for fair trial, jury trial section 5.4C.
That, I think without going into elaborate argument

that the jury having been out since Monday afternoon and by the time it gets to be 5 p.m. on Thursday afternoon, that those would be appropriate, and I move that they be asked of the jury at that time.

MR. DOW: Your Honor, I would oppose Mr. Quinlan's request for an inquiry. As I read my notes, the modified Allen charge was given yesterday morning about 11:30. Since that time there have been four notes from the jury, three of which requested further testimonny be read to them. That was done. Their last question concerning a point concerning the legal aspect of count three together with those three previous notes indicate that they are advancing toward a verdict on at least one count. That, it appears to me, is an indication that the jury should, unless they otherwise indicate to us something of the nature of a deadlock, I think it is appropriate to let them continue with their deliberations. They are obviously very conscientious. They have accepted this task very seriously. They have applied themselves to it, and by the nature of their notes, especially this last note, I ink we can see that they are seriously considering the charge in an intelligent fashion.

MR. QUINLAN: I can't see what the harm

is in asking them just that, the two points that I raised.

THE COURT: Well, I think I will reserve on it.

Off the record.

(Discussion off the record.)

(The following proceedings took place in the courtroom at 5 p.m. without the presence of the jury.)

MR. QUINLAN: Your Honor, it is 5 p.m.

I renew my motion for the reasons previously stated.

THE COURT: Yes, and you object for the reasons previously stated, and I deny the motion.

Let's get the jury in. I am going to send them home tonight and call them back tomorrow morning.

(Jury enters courtroom.)

THE COURT: Ladies and gentlemen, we have again reached the hour of 5 o'clock, and I propose to send you home again with the same instructors with respect to the secrecy of your deliberations and to ask you to promptly report tomorrow morning at 9:30 so that we can again begin your deliberations at that time.

Mr. Tully, you are the foreman of the jury, are you?

FOREMAN OF THE JURY: Yes, your Honor.

THE COURT: All right, fine. I have
no reason at this point to ask any questions of you,
and I have so informed both counsel. I am assuming
that you are continuing in your deliberations and
you will continue tomorrow morning. So until
tomorrow morning, have a nice evening.

All right, gentlemen, goodevening.

(Proceedings were adjourned.)

JUNE 18th, 1976

(The following proceedings took place in the courtroom without the presence of the jury.)

THE COURT: We have a note with respect to count three of the charge. The note reads, "On page 15, line 20, does a building specifically mean Plant 4, Canal Street, Shelton, Connecticut? And we are confused in that we don't know if a building and the building specifically means Plant 4."

And I am going to say to them that a building means a building, and an intent to destroy a building means just that without specificity as to a particular plant.

MR. QUINLAN: I would request an addition.

THE COURT: Yes?

MR. QUINLAN: That the Court state that on count three they must be convinced that the Government has proven each of the elements in count three beyond a reasonable doubt.

MR. DOW: Your Honor, I appreciate what Mr. Quinlan is saying, but if that isn't evidenct from the length of their deliberations and the numerous times that was repeated within the instructions, and we now know, I believe, that we went through those

instructions very carefully after the note.

THE COURT: I have no problem about that. I am going to repeat it. I think it is always worthwhile to repeat it once more.

MR. QUINLAN: Thank you.

THE COURT: Let's get the jury in.

(Jury enters courtroom at 10:30 a.m.)

gentlemen. With respect to your questions concerning the charge and a building and the building, it is not necessary that a person has the intent to destroy a preticular plant. There is no requirement of specificity, as long as he intends to destroy a building. Now, needless to say, having told you that, I want to repeat once more that with respect to count three and every other count in the indictment, it is the Government's burden to prove beyond a reasonable doubt each and every elements of those yours. And with that, I will send you back to your

(Jury resumes deliberations.)

deliberations, and I will also give you my apparently

faulty charge back.

(The following proceedings took place in the courtroom without the presence of the jury.)

THE COURT: Do you want to make any

statements for the record before we get the jury in?

MR. DOW: No, your Honor.

MR. QUINLAN: No, your Honor.

THE COURT: All right, let's get the

jury in.

(Jury enters courtroom at 12:05 p.m.)

of the jury, I think the time has come when I must ask you a couple of questions. The first of which will be directed to your foreman and the second of which will be directed to each of you individually. Both of these questions can be answered by yes or no, and I would ask you, please do not volunteer anything more than that. Answer them yes or no.

Mr. Tully, has the jury been able to reach agreement with respect to any of the counts?

FORE AN OF THE JURY: Yes.

THE COURT: All right. Now I will address the question to the balance, to all of the jurors as we go down the line.

Patricia Ellis, in your opinion, is there any reasonable probability that the jury will reach agreement with respect to the remaining counts?

MRS. ELLIS: Yes.

THE COURT: All right. And Edward J.

Zobre, in your opinion, is there any reasonable probability that the jury will reach agreement with respect to the remaining counts?

MR. ZOBRE: Yes, your Honor.

THE COURT: And Harry G. Herzog, is there any reasonable probability, in your opinion, that the jury will reach agreement with respect to the remaining counts?

MR. HERZOG: Yes, your Honor.

THE COURT: All right. Thomas B.

Trembly, in your opinion, is there any reasonable probability that the jury will reach agreement with respect to the remaining counts?

MR. TREMBLY: Yes, your Honor.

THE COURT: And Frank T. Quinn, is there any reasonable probability, in your opinion, that the jury will reach agreement with respect to the remaining counts?

MR. QUINN: Yes, your Honor,

THE COURT: And Cecilia K. Parkinson, is there any reasonable probability, in your opinion, that the jury will reach agreement with respect to the remaining counts?

MRS. PARKINSON: Yes, your Honor.

THE COURT: And Lena Froehlich, in your

opinion, is there any reasonable probability that the jury will reach agreement with respect to the remaining counts?

MRS. FROEHLICH: Yes, your Honor.

THE COURT: And Eileen C. McCabe, is there any reasonable probability in your opinion that the jury will reach agreement as to the remaining counts?

MRS. MC CABE: Yes.

THE COURT: And Wally Gulliksen, is there any reasonable probability, in your opinion, that the jury will reach agreement with respect to the remaining counts?

MR. GULLIKSEN: Yes, your Honor.

THE COURT: And Edith T. Black, in your opinion, is there any reasonable probability that the jury will reach agreement with respect to the remaining counts?

MRS. BLACK: Yes, your Honor.

THE COURT: And John Tully, in your opinion, is there any reasonable probability that the jury will reach agreement with respect to the remaining counts?

MR. TULLY: Yes, your Honor.

THE COURT: And Charles F. Fitzpatrick,

is there in your opinion, any reasonable probability that the jury will reach agreement with respect to the remain counts?

MR. FITZPATRICK: Yes, your Honor.

THE COURT: All right, ladies and gentlemen, thank you very much for your responses.

You may return to your deliberations. And the marshal informs me your lunch is on the way.

(Jury resumes deliberations.)

(The following proceedings took place in the courtroom at 2:10 p.m. without the presence of the jury.)

THE COURT: I am informed that this was received at 1:30 this afternoon. "We have reached a verdict. John Tully, Foreman."

So if you will get the jury in, please.

(Jury enters courtroom at 2:13 p.m.)

THE COURT: All right, Mr. Clerk.

THE CLERK: Ladies and gentlemen of the jury, have you agreed upon a verdict, and if so, how do you find and who shall say for you.

THE COURT: Mr. Tully?

THE CLERK: How do you find on count

one?

FOREMAN OF THE JURY: Guilty on count

one.

THE CLERK: How do you find on count

two?

FOREMAN OF THE JURY: Guilty on count

two.

THE CLERK: How do you find on count

three?

FOREMAN OF THE JURY: Not guilty on

count three.

THE CLERK: How do you find on count

four?

FOREMAN OF THE JURY: Guilty on count

four.

THE CLERK: Harken to your verdict, ladies and gentlemen, as the Court has recorded it, you say you find these verdicts, and so say you all?

(Affirmative responses.)

FOREMAN OF THE JURY: Yes.

MR. QUINLAN: May the jury be polled,

your Honor?

THE COURT: Yes, they may.

THE CLERK: As I call your name, ladies and gentlemen, indicate how you voted on count one.

Lena Froehlich?

JUROR, SEAT NO. 1: Guilty.

THE CLERK: Eileen C. McCabe?

JUROR, SEAT NO. 2: Guilty.

THE CLERK: Wally Gulliksen?

JUROR, SEAT NO. 3: Guilty.

THE CLERK: Edith T. Black?

JUROR, SEAT NO. 4: Guilty.

THE CLERK: John J. Tully?

JUROR, SEAT NO. 5: Guilty.

THE CLERK: Charles F. Fitzpatrick?

JUROR, SEAT NO. 6: Guilty.

THE CLERK: Patricia W. Ellis?

JUROR, SEAT NO. 7: Guilty.

THE CLERK: Edward J. Zobre?

JUROR, SEAT NO. 8: Guilty.

THE CLERK: Harry G. Herzog, Sr.?

JUROR, SEAT NO. 9: Guilty.

THE CLERK: Thomas P. Trembly?

JUROR, SEAT NO. 10: Guilty.

THE CLERK: Frank T. Quinn?

JUROR, SEAT NO. 11: Guilty.

THE CLERK: Cecilia K. Parkinson?

JUROR, SEAT NO. 12: Guilty.

THE CLERK: On count two; Lena Froehlich

JUROR, SEAT NO. 1: Guilty.

THE CLERK: Eileen C. McCabe?

JUROR SEAT NO. 2: Guilty.

THE CLERK: Wally Gulliksen?

JUROR, SEAT NO. 3: Guilty.

THE CLERK: Edith T. Black?

JUROR, SEAT NO. 4: Guilty.

THE CLERK: John J. Tully?

JUROR, SEAT NO. 5: Guilty.

THE CLERK: Charles F. Fitzpatrick?

JUROR, SEAT NO. 6: Guilty.

THE CLERK: Patricia W. Ellis?

JUROR, SEAT NO. 7: Guilty.

THE CLERK: Edward J. Zobre?

JUROR, SEAT NO. 8: Guilty.

THE CLERK: Harry G. Herzog, Sr.?

JUROR, SEAT NO. 9: Guilty.

THE CLERK: Thomas P. Trembly?

JUROR, SEAT NO. 10: Guilty.

THE CLERK: Frank T. Quinn?

JUROR, SEAT NO. 11: Guilty.

THE CLERK: Cecilia K. Parkinson?

JUROR, SEAT NO. 12: Guilty

THE CLERK: On count three, Lena Froehligh?

JUROR, SEAT NO. 1: Not guilty.

THE CLERK: Eileen C. McCabe?

JUROR, SEAT NO. 2: Not guilty.

THE CLERK: Wally Gulliksen?

JUROR, SEAT NO. 3: Not guilty.

THE CLERK: Edith T. Black?

JUROR, SEAT NO. 4: Not guilty.

THE CLERK: John J. Tully?

JUKOR, SEAT NO. 5: Not guilty.

THE CLERK: Charles F. Fitzpatrick?

JUROR, SEAT NO. 6: Not guilty.

THE CLERK: Patricia W. Ellis?

JUROR, SEAT NO. 7: Not guilty.

THE CLERK: Edward J. Zobre?

JUACR, SEAT NO. 8: Not guilty.

THE CLERK: Harry G. Herzog, Sr.?

JUROR, SEAT NO. 9: Not guilty.

THE CLERK: Thomas P. Trembly?

JUROR, SEAT NO. 10: Not guilty.

THE CLERK: Frank T. Quinn?

JUROR, SEAT NO. 11: Not guilty.

THE CLERK: Cecilia K Parkinson?

JUROR, SEAT NO. 12: Not guilty.

THE CLERK: On count four, Lena Froehlick?

JUROR, SEAT NO. 1: Guilty.

THE CLERK: Eileen C. McCabe?

JUROR, SEAT NO. 2: Guilty.

THE CLERK: Wally Gulliksen?

JURY DISCHARGED.

JUROR, SEAT NO. 3: Guilty.

THE CLERK: Edith T. Black?

JUROR, SEAT NO. 4: Guilty.

THE CLERK: John J. Tully?

JUROR, SEAT NO. 5: Guilty.

THE CLERK: Charles F. Fitzpatrick?

JUROR, SEAT MO. 6: Guilty.

THE CLERK: Patricia W. Ellis?

JUROR, SEAT NO. 7: Guilty.

THE CLERK: Edward J. Zobre?

JUROR, SEAT NO. 8: Guilty.

THE CLERK: Harry G. Herzog, Sr.?

JUROR, SEAT NO. 9: Guilty.

THE CLERK: Thomas P. Trembly?

JUROR, SEAT NO. 10: Guilty.

THE CLERK: Frank T. Quinn?

JUROR, SEAT NO. 11: Guilty.

THE CLERK: Cecilia K. Parkinson?

JUROR, SEAT NO. 12: Guilty.

THE COURT: All right, ladies and

gentlemen of the jury, I am going to discharge you at this point with the thanks of the Court for your attentiveness during the trial and for your dedication in your deliberations. I understand from the clerk, although I have not kept count of the hours, that you

have been deliberating for some 33 1/2 hours, and that is indeed a long time considering the time during which the trial took place and the evidence was introduced. But you have done your duty without fear or favor, for which you have the thanks of the counsel on both sides and the Court. Thank you.

And it has been a pleasure working with you. I want to say in addition that you will never see more competent more gentlemanly counsel than you have seen in this trial. Thank you, ladies and gentlemen.

(Jury leaves courtroom.)

MR. DOW: Your Honor, I have no motion to make with respect to bail in light of the status of the other defendants who were convicted and who have remained at liberty subsequent to conviction.

I think it would be inappropriate to make a motion in that regard as to Mr. Tiche. I would like to note, your Honor, my appreciation to the United States attorney for this district for the courtesies he has shown me, having come up from Connecticut, and to the facilities and the help he has made available to me, and also my appreciation to your Honor for the courtesies which you have shown us, despite the difficulties with logistics, et cetera, and to Mr. Quinlan for his courtesies as well.

MOTIONS TO SET ASIDE VERDICTS.

MR. QUINLAN: I would like to express my appreciation to the Court, too. I can't imagine a judge who would be more fair and cooperative.

And also, as far as Mr. Dow is concerned, he won, and I think he conducted himself as an Assistant United States Attorney should, and I would like to express my appreciation to him.

THE COURT: For the record, Mr. Quinlan, your motions?

MR. QUINLAN: I move to set aside the verdict on the ground that it is not supported by the evidence. Also, I move to set aside the guilty verdict on counts one, two and four on the ground that they are inconsistent with the acquittal on count three. And I move to set aside the guilty verdicts on counts one, two and four for all the reasons that appear in the record.

THE COURT: All right. All three motions are denied. I will not remand the defendant.

I'll permit him to remain on bail. He is on bail now.

MR. DOW: He is now on bail. I think it is a nonsecured \$5,000 bail, I'm not sure.

THE COURT: I will permit him to remain on bail, but, of course, a condition of that bail is

that he will appear this afternoon before Mr.
Waterson for purposes of commencing a presentence report.

MR. QUINLAN: He will do that.

THE COURT: And I will set sentencing for 10 c'clock on July 6th in Albany. The only reason why it is Tuesday is that Monday is a holiday.

MR. QUINLAN: July 6th is my birthday, too, but that is all right.

THE COURT: All right. Again, I express my appreciation to counsel for the manner in which this trial was handled. I think it was handled beautifully and competently and efficiently.

Court will be in recess.

Establishe

313 Montgomery Street Syracuse, New York 13202 (315) 422-4805

Russell D. Hay/President Everett J. Rea/General Manager

1 October 1976

Re: United State of America vs. Michael J. Tiche

State of New York)
County of Onondaga) ss.:
City of Syracuse)

EVERETT J. REA,

Being duly sworn, sposes and says: That he is associated with Spaulding Law Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of William J. Quinlan, Esq.

Attorney(for Appellant

(Sinhe personally served three (3) copies of the printed Record Brief Appendix of the above entitled case addressed to:

HON. PETER DORSEY
United States Attorney
27^ Orange Street
P. O. Box 1824
New Haven, Connecticut 06508

By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York, on

☐ By nand delivery

1 October 1976.

EVERETT J. REA

Sworn to before me this 1st day of October 1976.

Notary Public

Commissioner of Deeds

cc: William J. Quinlan, Esq.